

**CONTRACT REQUEST FORM (CRF)**

CEC-94 (Revised 5/11)

CALIFORNIA ENERGY COMMISSION



☐ New Contract - - ☒ Amendment to Existing Contract: 400-10-004 Amendment Number: H1

| Division                                 | Contract Manager: | MS- | Phone        | CM Training Date |
|--|-------------------|-----|--------------|------------------|
| 400 Efficiency Renewable Energy Division | Rebecca Menten    | 37  | 916-654-5072 | 2/16/11          |

| Contractor's Legal Name     | Federal ID Number |
|-----------------------------|-------------------|
| Local Government Commission | 94-2791699        |

| Title of Project          |
|---------------------------|
| Energy Upgrade California |

| Term                  | Start Date  | End Date    | Amount        |
|-----------------------|-------------|-------------|---------------|
| New/Original Contract | 11 / 1 / 10 | 3 / 31 / 12 | \$ 33,176,912 |

Line up the Amendment information as best as possible in the following boxes

| Amendment # | End Date (mm/dd/yy) | Amount      |
|-------------|---------------------|-------------|
| 1           | 03/31/2012          | \$5 million |

| Business Meeting Information   |                |                                  |  |
|--------------------------------|----------------|----------------------------------|--|
| Proposed Business Meeting Date | 9/21/11        | <input type="checkbox"/> Consent | <input checked="" type="checkbox"/> Discussion |
| Business Meeting Presenter     | Rebecca Menten | Time Needed:                     | minutes  |

| Agenda Item Subject and Description  |
|--|
| Possible approval of amendment to revise the concept of the original financial clearinghouse proposal, extend a revolving loan fund to the Sonoma County Energy Independence Fund, and develop contingency plans for underspent funds. The credit enhancement program has the potential to absorb an additional \$5 million if funding becomes available. Possible approval of minor changes to the Terms and Conditions of the Agreement. |

**Business Meeting approval is not required for the following types of contracts:** *Executive Director's signature is required in all cases.*

- ☐ Contracts less than \$10k (*Policy Committee's signature is also required*)
- ☐ Amendment for a no-cost time extension. Must be first extension, less than one year and original contract less than \$100k.
- ☐ Contracts less than \$25k for Expert Witness in Energy Facility licensing cases and amendments.

**Purpose of Contract or Purpose of Amendment, if applicable**

The Local Government Commission contract (EUC #400-10-004) supports the Energy Upgrade California program, a collaboration between state agencies, local governments, and utilities to support a growing building retrofit market. The California Energy Commission has dedicated over \$115 million dollars to support this program, directing a large majority of federal stimulus funding into this effort.

The Local Government Commission contract funds the important infrastructure necessary to drive market transformation in the building retrofit sector. By carefully developing and streamlining messaging across the state, consolidating resources into a 'one stop shop' web portal to the benefit of consumers, and providing access to low interest long term financing for energy improvements, the LGC Contract seeks to overcome the significant market barriers to energy upgrades.

The Local Government Commission contract supports existing Energy Commission programs and mandates. The Energy Upgrade California program is the foundation of efforts planned under Assembly Bill 758 (2008) programs to achieve comprehensive energy efficiency gains in existing buildings. The pilot programs and strategies tested and evaluated through the Energy Upgrade California program, including the significant collaborative relationships developed with stakeholders across the spectrum, are critical to designing effective program strategies for AB 758. Additionally the LGC Contract supports HERS II, workforce development and QA / QC programs, and efforts to improve access to low cost sustainable financing for energy improvements.

The amendment to this contract would support the establishment of a statewide credit enhancement fund which could be accessed via application from local government financing programs. The Energy Commission will work with the Local Government Commission to establish the guidelines for the financing program to ensure strong local government programs that demonstrate merit and competency have access to these funds. The guidelines will be consistent with the State Energy Program guidelines on retrofit work and existing similar programs to ensure the greatest possible consistency in the market. This fund will address the major market barrier to retrofits by helping to reduce the cost of capital to consumers, and will support existing ARRA programs. The fund will additionally be available to non-ARRA programs that meet program requirements, helping to expand the benefits of the ARRA programs to a larger audience.

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This amendment will additionally support the establishment of a revolving loan program for the Sonoma County Energy Independence Program to address the delay in payment to single family residential projects. This revolving loan fund is anticipated to be completely spent down within a month at which point the County of Sonoma would recharge this fund through bond proceeds. This fund would reduce barriers to entry for contractors to the SCEIP program. In the event that the County of Sonoma experiences historically low uptake in the program and is unable to expend these funds, the remaining funds will be placed in the statewide credit enhancement program to the potential benefit of local government financing programs across the state.

Along with the major amendment requested above, this amendment would shift funds from underspent categories, reallocate funds to areas that will likely experience shortfalls without the fund shift, and develop contingency plans for funds that rely on consumer uptake.

Minor changes are requested in the Terms and Conditions of the agreement to incorporate intellectual property provisions required by the Department of Energy and to resolve discrepancies between intellectual property provisions of this contract and those of major leverage fund sources.

**California Environmental Quality Act (CEQA) Compliance**

1. Is Contract considered a "Project" under CEQA?  
☐ Yes: skip to question 2 ☒ No: complete the following (PRC 21065 and 14 CCR 15378):  
 Explain why contract is not considered a "Project":  
 Contract will not cause direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because .

2. If contract is considered a "Project" under CEQA:

☒ a) Contract **IS** exempt. (Draft NOE required)

☐ Statutory Exemption. List PRC and/or CCR section number:

☒ Categorical Exemption. List CCR Sections 15301, 15302, 15306, 15308, 15309, and 15322 section number:

☐ Common Sense Exemption. 14 CCR 15061 (b) (3)

Explain reason why contract is exempt under the above section:

Contract will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because contract funds marketing, outreach, non-retrofit related incentives, and other activities that do not result in activities defined as 'projects' per the scope of CEQA.

☐ b) Contract **IS NOT** exempt. The Contract Manager needs to consult with the Energy Commission attorney assigned to their division and the Siting Office regarding a possible Initial Study.

**Budgets Information**

| Contract Amount Funded |             | Breakdown by FY |             |            | Funding Sources                   |    |                 |        |
|------------------------|-------------|-----------------|-------------|------------|-----------------------------------|----|-----------------|--------|
| Funding Source         | Amount      | FY              | Amount      | Approved ? | Funding Source                    | FY | Budget List No. | Amount |
| ARFVTF                 | \$          |                 | \$          | No         | Funding Source                    |    |                 | \$     |
| ECAA                   | \$          |                 | \$          | No         | Funding Source                    |    |                 | \$     |
| State- ERPA            | \$          |                 | \$          | No         | Funding Source                    |    |                 | \$     |
| Federal                | \$5,000,000 | 09/10           | \$5,000,000 | No         | Funding Source                    |    |                 | \$     |
| PIER - E               | \$          |                 | \$          | No         | Funding Source                    |    |                 | \$     |
| PIER - NG              | \$          |                 | \$          | No         | Funding Source                    |    |                 | \$     |
| Reimbursement          | \$          |                 | \$          | No         | Funding Source                    |    |                 | \$     |
| RRTF                   | \$          |                 | \$          | No         | Funding Source                    |    |                 | \$     |
| Other:                 | \$          |                 | \$          | No         | Other:                            |    |                 | \$     |
| TOTAL: \$5,000,000     |             | TOTAL:          | \$5,000,000 |            | TOTAL: \$ 0                       |    |                 |        |
| Reimbursement          |             |                 |             |            | Federal Agreement #: JE-EE0000221 |    |                 |        |

**Contractor's Administrator/ Officer**

|                   |                                    |                   |  |
|-------------------|------------------------------------|-------------------|--|
| Name:             | Aatisha Singh                      | Name:             | Kate Meis, LGC                         |
| Address:          | 1303 J street, Ste 250             | Address:          | 1303 J street, Ste 250                 |
| City, State, Zip: | Sacramento, CA 95814               | City, State, Zip: | Sacramento, CA 95814                   |
| Phone/ Fax:       | (916)448-1198(p), (916)448-8246(f) | Phone/ Fax:       | (916)448-1198x305(p), (916)448-8246(f) |
| E-Mail:           | asingh@lgc.org                     | E-Mail:           | kmeis@lgc.org                          |

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**Contractor Is**

- ☒ Private Company (including non-profits)  
☐ CA State Agency (including UC and CSU)  
☐ Government Entity (i.e. city, county, federal government, air/water/school district, joint power authorities, university from another state)

**Selection Process Used**

- ☐ Solicitation Select Type Solicitation #: \_\_\_\_\_ - \_\_\_\_\_ # of Bids: \_\_\_\_\_ Low Bid? ☐ No ☐ Yes  
☒ Non Competitive Bid (Attach CEC 96)  
☐ Exempt Select Exemption (see instructions)

**Civil Service Considerations**

- ☐ Not Applicable (Contract is with a CA State Entity or a membership/co-sponsorship)  
☐ Public Resources Code 25620, et seq., authorizes the Commission to contract for the subject work. (PIER)  
☒ The Services Contracted:  
     ☐ are not available within civil service  
     ☐ cannot be performed satisfactorily by civil service employees  
     ☒ are of such a highly specialized or technical nature that the expert knowledge, expertise, and ability are not available through the civil service system.  
☒ The Services are of such an:  
     ☐ urgent  
     ☐ temporary, or  
     ☐ occasional nature  
     that the delay to implement under civil service would frustrate their very purpose.

**Justification:**

The funding for this contract is from the American Recovery and Reinvestment Act (ARRA). These funds have a deadline for expenditure of March 31<sup>st</sup>, 2012. Based on this deadline, and on the complexity of the work to be performed, it is infeasible to meet the Scope of Work with civil service personnel.

**Payment Method**

- ☒ A. Reimbursement in arrears based on:  
     ☒ Itemized Monthly ☐ Itemized Quarterly ☐ Flat Rate ☐ One-time  
☒ B. Advanced Payment  
☒ C. Other, explain: Advance payment available only for financial subsidy accounts such as a Loan Loss Reserve.

**Retention**

1. Is contract subject to retention? ☐ No ☒ Yes  
 If Yes, Do you plan to release retention prior to contract termination? ☐ No ☒ Yes

**Justification of Rates**

Rates are concurrent with like services.

**Disabled Veteran Business Enterprise Program (DVBE)**

1. ☐ Not Applicable  
 2. ☐ Meets DVBE Requirements DVBE Amount:\$ \_\_\_\_\_ DVBE %: \_\_\_\_\_  
     ☐ Contractor is Certified DVBE  
     ☐ Contractor is Subcontracting with a DVBE: \_\_\_\_\_  
 3. ☐ Contractor selected through CMAS or MSA with no DVBE participation.  
 4. ☒ Requesting DVBE Exemption (attach CEC 95)

**Is Contractor a certified Small Business (SB), Micro Business (MB) or DVBE?**

If yes, check appropriate box: ☐ SB ☐ MB ☐ DVBE

**Is Contractor subcontracting any services?**

If yes, give company name and identify if they are a Small Business (SB), Micro Business (MB) and/or DVBE:

|                  |  |                             |                             |                               |
|------------------|--|-----------------------------|-----------------------------|-------------------------------|
| See Attachment 1 | <input checked="" type="checkbox"/> No | <input type="checkbox"/> SB | <input type="checkbox"/> MB | <input type="checkbox"/> DVBE |
|                  | <input type="checkbox"/> No            | <input type="checkbox"/> SB | <input type="checkbox"/> MB | <input type="checkbox"/> DVBE |
|                  | <input type="checkbox"/> No            | <input type="checkbox"/> SB | <input type="checkbox"/> MB | <input type="checkbox"/> DVBE |

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**Miscellaneous Contract Information**

- |  |  |   |
|--|--|---|
| 1. Will there be Work Authorizations?  | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes            |
| 2. Is the Contractor providing confidential information?   | <input type="checkbox"/> No            | <input checked="" type="checkbox"/> Yes |
| 3. Is the contractor going to purchase equipment?  | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes            |
| 4. Check frequency of progress reports   |  |   |
| <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Other... |  |   |
| 5. Will a final report be required?  | <input type="checkbox"/> No            | <input checked="" type="checkbox"/> Yes |
| 6. Is the contract, with amendments, longer than a year? If yes, why?  | <input type="checkbox"/> No            | <input checked="" type="checkbox"/> Yes |
| ARRA   |  |   |

**The following items should be attached to this CRF**

- |   |   |  |
|---|---|--|
| 1. Scope of Work, Attach as Exhibit A.              | <input type="checkbox"/> N/A            | <input checked="" type="checkbox"/> Attached |
| 2. Budget Detail, Attach as Exhibit B.              | <input type="checkbox"/> N/A            | <input checked="" type="checkbox"/> Attached |
| 3. CEC 96, NCB Request                              | <input type="checkbox"/> N/A            | <input checked="" type="checkbox"/> Attached |
| 4. CEC 30, Survey of Prior Work                     | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached            |
| 5. CEC 95, DVBE Exemption Request                   | <input type="checkbox"/> N/A            | <input checked="" type="checkbox"/> Attached |
| 6. Draft CEQA Notice of Exemption (NOE)             | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached            |
| 7. Resumes  | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached            |
| 8. CEC 105, Questionnaire for Identifying Conflicts |   | <input checked="" type="checkbox"/> Attached |
| 9. CEC 106, IT Component Reporting Form             |   | <input checked="" type="checkbox"/> Attached |

\_\_\_\_\_  
Contract Manager\_\_\_\_\_  
Date\_\_\_\_\_  
Office Manager\_\_\_\_\_  
Date\_\_\_\_\_  
Deputy Director\_\_\_\_\_  
Date

The following signatures are only required when contract approval is delegated to the Executive Office and not approved at a Business Meeting.  
See Business Meeting Information Section.

\_\_\_\_\_  
Presiding Policy Committee\_\_\_\_\_  
Date\_\_\_\_\_  
Associate Policy Committee\_\_\_\_\_  
Date\_\_\_\_\_  
Executive Director\_\_\_\_\_  
Date

## **Exhibit A Scope of Work**

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Exhibit A – Task List

Key Name List

Table 1 – Tasks and Key Personnel

Acronym List

Definitions

### **Program Overview**

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- II. Goals and Objectives of the Agreement
- III. Funding
- IV. Program Activities
- V. Program Team

### **Program Tasks**

1.0 Administration

2.0 Technical Tasks and Program Delivery

- 2.1 Implementation & Sustainability Planning
- 2.2 Integrated Web Portal
- 2.3 Workforce Development, Property Owner & Stakeholder Outreach & Engagement
- 2.4 Tracking, Reporting & Quality Assurance
- 2.5 Innovative Financing Pilot Programs
- 2.6 Statewide Clearinghouse

Attachment 1: Elements of the Energy Upgrade California Program

## **Exhibit A**

### **Scope of Work**

#### **TASK LIST**

| <b>Task #</b> | <b>Task Name</b>   |
|---------------|--|
| <b>1.0</b>    | <b>Administration Activities</b>   |
| <b>2.0</b>    | <b>Technical Tasks/ Program Delivery</b>                                   |
| 2.1           | Implementation & Sustainability Planning                                   |
| 2.2           | Integrated Web Portal  |
| 2.3           | Workforce Development, Property Owner, & Stakeholder Outreach & Engagement |
| 2.4           | Tracking, Reporting, & Quality Assurance                                   |
| 2.5           | Innovative Financing Pilot Programs  |
| 2.6           | Statewide Clearinghouse  |

**Table 1: Task List**

## KEY NAME LIST

### Local Government Commission

KM Kate Meis, Program Director  
LC Linda Cloud, Managing Director  
AS Aatisha Singh, Project Manager

### Renewable Funding (RF)

AH Annie Henderson, Program Director  
AB Adam Byrnes, Program Manager  
SS Scott Strait, Chief Information Officer  
CS Cliff Staton, Vice President of Marketing  
MF Mimi Frusha, Chief Operating Officer  
DE Daniel Etra, Product Development Manager

### Ecology Action (EA)

GJ Gine Johnson, Executive Director  
MB Margaret Bruce, Vice President  
CT Chuck Tremper, Vice President  
JM Jim Murphy, Vice President  
BJ Brennen Jensen, Deputy Program Director  
BH Brian Holman, Operations Director  
CC Colin Clark, Senior Program Manager  
JR Jennifer Rupnow, Senior Program Manager  
BL Bonnie Low, Senior Program Manager

### MIG Corporation (MIG)

MC Mindy Craig, Principal  
CDR Carie DeRuiter, Creative Director  
JV Joyce Vollmer, Communications Director  
TC Tim Carroll, Project Manager  
JE Jill Eulate, Project Manager  
SD Sarah Davis, Project Manager  
EC Ed Canalin, Sr. Graphic Designer  
FP Faylin Paciski, Project Manager  
DL Deanna Lee, Project Manager  
EF Ellie Fiore, Project Manager  
LM Laurie Mathews, Project Manager

### County of Sonoma (CoS):

RD Rod Dole – Auditor-Controller-Treasurer-Tax Collector and Administrator  
JO Jose Obregon – Director of General Services  
JHa John Haig – Energy and Sustainability Manager  
KL Kathy Larocque – Deputy County Counsel  
CO Cory O'Donnell – Deputy County Counsel  
JKa Jonathan Kadlec – Sonoma County Debt Manager

PJ Pam Johnston – Deputy Tax Collector  
 LY Liz Yager – Administrative Services Officer I  
 DL Diane Lesko – Department Analyst  
 GL Gina Lehl – Department Analyst  
 SR Sam Ruark - Administrative Services Officer I

Community Development Department of Los Angeles (CDD / LA)  
 Mark Hoffman (MH)

| Task # | Key Personnel   | Key Subcontractor(s) |
|--------|---|----------------------|
| 1.0    |   | ALL                  |
| 2.0    |   |                      |
| 2.1    | MB, BJ, CC, KM, AS, MF, AH, AB, MC, JV, CDR, TC, SD             | LGC, EA, RF, MIG     |
| 2.2    | MF, SS, DE, BJ, CC, MC, JV, EC, CDR, TC, AH, SD, LM             | RF, MIG, EA          |
| 2.3    | MB, BJ, CC, KM, AS, GJ, MB, CT, AH, MC, JV, EC, CDR, TC, SD, DL | EA, LGC, MIG         |
| 2.4    | MB, BJ, CC, MF, AH, DE, SD, DL, TC, MC, CDR                     | EA, RF, MIG          |
| 2.5    | RD, JO, JHa, KL, JKa, PJ, LY, GL, DL, SR, MH                    | CoS, LGC, CDD / LA   |
| 2.6    | N/A   | N/A                  |

**Table 2: Key Personnel and Subcontractors**

## ACRONYMS

Acronyms used throughout this Scope of Work are as follows:

|       |   |
|-------|---|
| ABAG  | Association of Bay Area Governments                         |
| ARRA  | American Recovery and Reinvestment Act of 2009              |
| AA    | Agreement Administrator                                     |
| BPI   | Building Performance Institute                              |
| BOS   | Board of Supervisors  |
| CBPCA | California Building Performance Contractors' Association    |
| CCA   | Community Choice Aggregation                                |
| CCM   | Energy Commission Contract Manager                          |
| CDD   | Community Development Department of the City of Los Angeles |
| CPR   | Critical Project Review                                     |
| DOE   | United States Department of Energy                          |
| EECBG | Energy Efficiency and Conservation Block Grant              |
| ELMP  | Energy Load Monitoring Programs                             |



|                 |  |
|-----------------|--|
| EUC             | Energy Upgrade California                                      |
| GHG             | Greenhouse Gas   |
| HERS II         | Phase II of Home Energy Rating System                          |
| HPwES           | Home Performance with Energy Star                              |
| HSD             | Human Services Department                                      |
| JPA             | Joint Power Agreement  |
| LACEP           | Los Angeles County's Energy Program                            |
| LADWP           | Los Angeles Department of Water and Power                      |
| LAPM            | LA Program Manager   |
| LGAC            | Local Government Advisory Committee                            |
| LGC             | Local Government Commission                                    |
| MEO             | Marketing, Education and Outreach                              |
| NCEIP           | North Coast Energy Independence Program                        |
| LGCPM           | LGC Program Manager  |
| RC <sub>x</sub> | Existing Building Retro-Commissioning                          |
| PAC             | Program Advisory Committee                                     |
| PACE            | Property Assessed Clean Energy                                 |
| RCPA            | Regional Climate Protection Authority                          |
| RFP             | Request for Proposal   |
| RRP             | Residential Retrofit Program – Sonoma County                   |
| SCEIP           | Sonoma County Energy Independence Program                      |
| SCEW            | Sonoma County Energy Watch (PG&E Local Government Partnership) |
| SCWA            | Sonoma County Water Agency                                     |
| SEP             | State Energy Program   |
| SOP             | Standard Operating Procedure                                   |
| TAC             | Technical Advisory Council                                     |
| UCC.1           | Uniform Commercial Code (Financing Statement)                  |
| USDA            | U.S. Department of Agriculture                                 |
| WIB             | Workforce Investment Board                                     |

**Table 3: Acronyms**

## **DEFINITIONS**

The following definitions apply throughout this Agreement:

1. **“Contractor”** means the entity that receives funding directly from the Energy Commission under this Agreement. The Contractor is defined as a “subrecipient” under Federal law (see Office of Management and Budget (OMB) Circular A-133, Subpart A, Section .105 and Subpart B, Section .210).

2. **“Program Coordinator”** is the entity that is subcontracted to the Contractor to execute certain tasks as specified in this Scope of Work. The Program Coordinator will report to the Program Manager.
3. **“LA Program Manager” (LAPM)** is the entity contracted to manage the overall program on behalf of the Contractor, the Community Development Department of the City of Los Angeles. David Hodgins of Sustento Group LLC will serve as the Program Manager working on behalf of the Contractor. The Program Manager’s scope of services will include the tasks specified in this Scope of Work. For purposes of this Scope of Work, the Program Manager will perform the responsibilities of the Contractor.
4. **“Subaward”** means an award made by the Contractor to a subawardee or to a vendor.
5. **“Subawardee”** means any entity other than a vendor that receives funding from the Contractor to carry out or support any portion of this Agreement.
6. **“Subcontractor”** means a subawardee or any entity other than a vendor that receives funding from the Contractor to carry out or support any portion of this Agreement.
7. **“Vendor”** means any entity defined as such by OMB Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210).

## I. Problem Statement

California leads the nation in energy efficiency and renewable energy residential and commercial retrofit programs. More than \$275 million in American Recovery and Reinvestment Act of 2009 (ARRA) funds are being committed to furthering these efforts over the next three years, and more than \$3.2 billion dollars in utility funds will support these efforts. A comprehensive program that includes workforce development, quality assurance, regional development, education and outreach is required to achieve the goals of the ARRA program and California's AB 32 for energy efficiency and renewable energy generation, including, greenhouse gas emission reductions and job creation. Property owners must be educated about the benefits of energy efficiency and renewable energy, but even then the adopting energy efficiency and renewable energy products, services, and practices is impeded by inadequate access to capital, limited understanding of appropriate technologies, a largely untrained workforce, and limited support from public agencies and utilities.

*California's Energy Action Plan*<sup>1</sup>, *Integrated Energy Policy Report*<sup>2</sup>, and *Long Term Energy Efficiency Strategic Plan*<sup>3</sup> place high priority on achieving dramatically greater energy efficiency in existing buildings including achieving an average energy savings of 40 percent in all California residential buildings by 2020. Such high levels of energy efficiency retrofits and expanding onsite solar electric and other renewable energy will not be possible without major expansion in the availability of effective financing to residential and commercial property owners.

In addition, in January 2010 the Energy Commission was tasked with "develop[ing] and implement[ing] a comprehensive program to achieve greater energy savings in California's existing residential and nonresidential building stock<sup>4</sup>" when Assembly Bill 758 (AB 758, Skinner) became law. As part of that comprehensive program, the Energy Commission has been directed to consider "a broad range of energy assessments, building benchmarking, energy rating, cost-effective energy efficiency improvements, public and private sector energy efficiency financing options, public outreach and education efforts, and green workforce training."<sup>5</sup>

To meet the mandate of AB 758 and to achieve the goals established in the plans and reports listed, the Energy Commission, in conjunction with the California Public Utilities Commission, has developed and is implementing a new initiative entitled *Energy Upgrade California* (Program), which provides the programmatic framework and infrastructure for a comprehensive residential and commercial retrofit program. This statewide energy efficiency, water efficiency and renewable energy retrofit program will be implemented in collaboration with public and investor-owned utilities (POUs/IOUs), local governments and ARRA-funded recipients. *Energy Upgrade California* will

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<sup>1</sup> <http://www.energy.ca.gov/2008publications/CEC-100-2008-001/CEC-100-2008-001.PDF>

<sup>2</sup> <http://www.energy.ca.gov/2009publications/CEC-100-2009-003/CEC-100-2009-003-CMF.PDF>

<sup>3</sup> <http://www.californiaenergyefficiency.com/docs/EEStrategicPlan.pdf>

<sup>4</sup> Public Resources Code 25943. (a) (1)

<sup>5</sup> Public Resources Code 25943. (a) (2)

encompass: the investor-owned utilities' whole-house improvement programs; Better Building Program (formerly Retrofit Ramp-Up) projects located in California and sponsored by the U.S. Department of Energy (DOE); the Energy Commission's retrofit programs funded by the State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) funds awarded under ARRA; Employment Development Department Workforce Investment Act (WIA), and many local jurisdiction programs using other EECBG and WIA funds. The thirteen specific elements of *Energy Upgrade California* are defined in **Attachment 1**. Through *Energy Upgrade California*, the Energy Commission is defining the technical requirements and programmatic best practices that are necessary for an effective, consistent and sustainable statewide energy efficiency and renewable energy retrofit program.

However, for *Energy Upgrade California* to be successful, a foundation must be laid that will include several areas: a centralized integrated web portal to consolidate rebate, incentive, qualified contractor and financing information for residential and commercial property owners; a suite of energy retrofit financing options that increases the availability and attractiveness of financing for a larger segment of California's population; streamlined quality assurance that meets the Energy Commission's requirements<sup>6</sup>, covers Program participants throughout the state, and reduces duplication; improved and standardized energy audits for single-family and multi-family residences and commercial buildings; an effective *Energy Upgrade California* brand; and comprehensive, statewide marketing and outreach strategy that interests and informs property owners, contractors, lenders and other stakeholders about the benefits of energy efficiency and renewable energy retrofits.

### **Property Assessed Clean Energy Financing**

California has been an early advocate and adopter of property-assessed clean energy (PACE)<sup>7</sup> financing, by which property owners investing in permanent energy efficiency, water efficiency, and/or renewable energy improvements can repay the loans through a voluntary contractual assessment on their property taxes. Since 2008, several PACE programs have been established in California and throughout the nation. PACE was poised to expand exponentially with more than twenty states having adopted PACE-enabling legislation.

While PACE has support from DOE, the Office of the Vice President and local communities across the nation, recent statements<sup>8</sup> by the Federal Housing Finance Agency (FHFA)<sup>9</sup> and the Office of the Controller of the Currency (OCC)<sup>10</sup>, both federal

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<sup>6</sup> Title 24 Standards: <http://www.energy.ca.gov/2008publications/CEC-400-2008-001/CEC-400-2008-001-CMF.PDF>  
HERS Standards: <http://www.energy.ca.gov/2008publications/CEC-400-2008-011/CEC-400-2008-011-CMF.PDF>  
Interim HERS II standards are in the process of development but also apply to this Agreement.

<sup>7</sup> Property Assessed Clean Energy (PACE) programs, also known as AB 811 programs, allow property owners to finance the installation of energy improvements to their property through voluntary contractual assessments on their property tax bills. Local governments provide funding to property owners for eligible improvements by issuing bonds or other debt, which property owners repay through the assessments, which like other assessments have a senior lien to pre-existing privately held liens, such as mortgages.

<sup>8</sup> <http://www.fhfa.gov/webfiles/15884/PAcestMT7610.pdf> and <http://www.occ.treas.gov/ftp/bulletin/2010-25.html>

<sup>9</sup> The Federal Housing Finance Agency is the regulator and conservator of Fannie Mae and Freddie Mac, and the regulator of the twelve Federal Home Loan Banks

financial regulators, questioning the security of PACE financing have created a climate of uncertainty that threatens to derail the success of existing PACE programs and substantially threatens further uptake of PACE financing to support energy efficiency retrofits and renewable energy generation.

### Residential PACE

The Sonoma County Energy Independence Program (SCEIP) is a PACE municipal financing program currently capitalized through a combination of funding from the County Treasury Pool and funding from investment vehicles available through the Sonoma County Water Agency. Due to the actions of the FHFA and OCC, SCEIP (Program), with a successful 17 month track record, is the sole operating PACE program in the State as of August 2010. Other local jurisdictions in California need the leadership and guidance of a strategically designed and replicable residential PACE program to sustain operation and provide a replicable model pending resolution of the federal determinations, if this financing mechanism is to continue providing Californians with a secure, low-cost option for increasing the energy efficiency and livability of their homes.

In addition, in order to align SCEIP with key elements of Energy Upgrade California, additional measures are needed: integrating HERS II ratings, energy audits, new technology, refinancing mechanisms, a more robust water element, and a co-branded program reflecting this growth. Funding under this Agreement will support these additional measures.

### Commercial PACE

Improving energy efficiency is arguably the most direct way to improve the cash flow of an existing building. However, commercial building owners seeking to finance energy efficiency investments have largely been unable to procure loans, because commercial investment properties generally:

- are owned by limited liability<sup>11</sup> entities unrated by credit rating agencies and with no assets aside from the property itself
- are fully pledged under a mortgage and potentially additional debt
- must subordinate 3rd party interests to existing creditors, such as a mortgage holder
- disallow 3rd party liens on real property attachments, and/or use lease structures that generally prohibit costs of “elective” replacement or upgrade of building systems/equipment to be passed through to tenants, thus preventing owners from recovering invested capital (“split incentives”)

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<sup>10</sup> The Office of the Controller charts, regulates, and supervises all national banks, including those that make commercial mortgage loans

<sup>11</sup> Limited liability is a concept whereby a person's financial liability is limited to a fixed sum, most commonly the value of a person's investment in a company or partnership with limited liability. In other words, if a company with limited liability is sued, then the plaintiffs are suing the company, not its owners or investors.

The combined effect of these impediments has left prospective retrofit lenders with little to no security in projects they would otherwise like to finance, and commercial building owners without a means to proactively manage the energy consumption of their assets.

## II. Goals and Objectives of the Agreement

This Agreement seeks to support *Energy Upgrade California*, the Energy Commission's statewide energy and water efficiency and renewable energy generation retrofit program for single- and multi-family residential and commercial properties (Program). To do so, this Agreement will provide the funding necessary to implement the thirteen elements of *Energy Upgrade California* (see Attachment 1), including but not limited to energy retrofit financing, a one-stop shop statewide integrated web portal, quality assurance, workforce development, regional coordination, branding, and education, marketing and outreach needed to complement and work effectively with existing and planned State- and Federal-supported energy retrofit and workforce development programs.

### *Design Goals of Energy Upgrade California*

The Energy Commission designed the Program towards the following goals consistent with the Energy Commission's *State Energy Program Guidelines*:<sup>12</sup>

- **Incorporate workforce development training** by collaborating with regional Workforce Investment Boards, community colleges, and other local green jobs training programs and resources, and by providing incentives for the use of Clean Energy Workforce Training Program graduates.
- **Increase total job creation and retention** by securing leveraged funding to increase jobs created or retained.
- **Encompass economically disadvantaged areas** particularly affected by the housing and economic crises, including cities and counties below the statewide average unemployment rate.
- **Target outreach and marketing** to ethnic minority and non-English-speaking communities within the regions covered.
- **Meet time criticality requirements**, including achieving significant Program progress within six to nine months and expending all contract funds by March 31, 2012.
- **Engage innovative Program design** to strengthen Program participation, maximize energy savings and cost-effectiveness, and leverage additional funding, resources, tax credits, and incentives to ensure success.
- **Integrate eligible improvements**, including but not limited to second and third tier residential and municipal/commercial targeted measures and incentives.
- **Emphasize loading order** to achieve at least 10% increase in energy efficiency from retrofits before on-site renewable energy generation system installations can be financed with Program funds.
- **Conform to all applicable California laws** including building codes, protocols, standards, and permitting requirements.

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<sup>12</sup> The Guidelines are located at: <http://www.energy.ca.gov/recovery/sep.html>.

- **Ensure appropriate home energy ratings, energy audits, and building commissioning investigations** consistent with the California Home Energy Rating System Program or commercial energy audits and benchmarking.
- **Support efforts to address legal concerns** regarding property-assessed clean energy (PACE) financing for PACE pilot regions by completing any necessary validation actions, engaging qualified legal opinions for reasonable likelihood of success, and working with primary mortgage holders.
- **Achieve sustainability** by creating lasting changes in the market, enabling real progress toward California's climate goals, stimulating jobs, revitalizing communities, and establishing a robust foundation for continued program operation and success.
- **Build a broad regional collaborative approach** that will span California.
- **Ensure quality assurance (QA)** by complying with contract QA measures as defined in an Implementation Plan to be developed under this Agreement, and adopting additional QA and quality control measures.
- **Document energy savings** by requiring participants to submit an authorization to receive a customer information form after installation to clearly measure and report energy reductions achieved, and by performing HERS II test-out on a percentage of retrofits performed, to be specified in the Implementation Plan to be developed under this Agreement.
- **Comply with program transparency and reporting requirements** of the Energy Commission and DOE.
- **Work to maximize program cost-effectiveness** to 10 million BTUs per \$1,000 of ARRA funds spent.

Program activities funded by this Agreement are intended to overcome barriers preventing property owners to participate in *Energy Upgrade California*. This Agreement will support the first phase of *Energy Upgrade California*. Under this phase, all fifty-eight California counties will be eligible to participate in and benefit from the following Program elements: access to the *Energy Upgrade California* integrated web portal including information about financing options, applicable utility rebates and incentives, and any complementary state or federal programs; marketing, education and outreach; and quality assurance. This level of services is called "Program Basic."

Counties that have already invested demonstrated resources in residential and/or commercial retrofit financing programs and have passed resolutions or undertaken other activities that demonstrate commitment to energy retrofits within their regions have been preliminarily identified as candidates to receive additional services as "Program Plus" counties (see Table 4). Program Plus counties, which must agree to the Program terms and conditions, will be eligible to participate in and gain from the benefits available to Program Basic counties and all additional program elements, including but not limited to financing subsidies funded under this Agreement, grassroots community development, targeted outreach and rebates to offset the cost of HERS II pre-installation ratings and post-installation verification. Community development will be conducted through pre-identified "regions," single- or multi-county collaborations consisting solely of Program Plus counties that will be identified in the Implementation Plan. These regions will be established based on population, geography and any pre-existing collaborations that will facilitate communication and cooperation within that region. The services provided under this agreement may, at the discretion of the

Commission Contract Manager, be extended to all counties in the state if there is a demonstrated benefit and need.

In addition, the Agreement will fund the development and implementation of three innovative financing pilot programs, including a statewide subsidy fund, and two regional PACE pilot programs, one residential and one commercial, which will test the viability and replicability of PACE programs in the wake of the previous FHFA and OCC statements.

This Agreement will also fund critical information technology and other tasks to launch and ensure the sustainability of *Energy Upgrade California*.

### *Objectives of Energy Upgrade California*

The primary goal of *Energy Upgrade California* is to boost the adoption and quality of installed energy and water efficiency improvements and onsite renewable energy generation throughout the state. Specific objectives of the Program include:

- Overcoming barriers for residential (including multi-family) and commercial energy and water efficiency and renewable energy financing in California, such as consumer confusion, high interest rates and upfront costs;
- Developing, implementing and operating the *Energy Upgrade California* integrated web portal to provide consumers and property owners a one-stop resource for information on building retrofit benefits, financing and incentives, finding a qualified contractor, workforce training and home energy ratings;
- Spurring the growth of California's clean energy retrofit workforce by collaborating with workforce development partners, creating incentives to increase employment of the newly trained clean energy workforce, and maintaining a list of qualified contractors on the *Energy Upgrade California* website;
- Ensuring that quality assurance measures are adequately implemented for program participants statewide through collaboration with utility programs and additional activities to effect statewide quality assurance coverage;
- Supporting the expansion of HERS II and Building Performance Institute (BPI) certification in California by providing incentives for HERS II energy audits and post-installation verifications, providing scholarships for HERS II and BPI certification training, and creating or facilitating opportunities for unemployed and underemployed Californians to become fully certified and equipped HERS raters and BPI-certified installation contractors;
- Increasing the number of counties with successful energy retrofit programs through regional collaboratives that facilitate infrastructure and community development, and technical and financial subsidies focusing current resources on identified "Program Plus" counties;
- Encouraging property owners to obtain financing through the Program; and
- Ensuring that *Energy Upgrade California* is a sustainable Program.



## Financing

Resolving financing issues is key to addressing the barriers to rapid market uptake of energy improvements. This Program seeks to pilot three innovative approaches to resolving the financing issue and increasing the access of capital to the energy efficiency lending market.

This Program seeks to support existing and emerging local government financing programs by offering a statewide subsidy fund available by application from local governments. The subsidy will be available to support innovative applications for its use, encouraging creativity among potential programs. Criteria of the program will encourage those programs with the highest standards of work and the most potential to reach underserved lending markets. Loans leveraged with this subsidy fund will be tracked to build data and comfort in the financial world, showing that energy efficiency loans are a good investment.

The Program is also supporting three innovative financing pilot programs to pursue strategies that provide financing for retrofits in both the commercial and residential sector. Four local governments are being funded to implement property-assessed clean energy (PACE) financing programs for residential and commercial buildings. These PACE pilots will design adequate safeguards against the concerns of federal financial regulators and purposefully address the barriers to PACE financing created by FHFA and OCC guidance. These PACE pilot programs will also establish quality assurance and energy savings verification, education, marketing and outreach, home energy rating and audit protocols, and financing mechanisms that are specific to each PACE pilot. All PACE pilots will, however, integrate with the statewide web portal to the greatest extent possible.

## Residential PACE

The Program will enhance SCEIP using the Elements of Energy Upgrade California (*Energy Upgrade California*)<sup>13</sup> and prove the PACE model for expansion throughout the State of California. The *Energy Upgrade California* elements and strategies incorporated by SCEIP to attempt to address the federal FHFA concerns will serve as a template that can be adopted successfully by other jurisdictions across California. Additionally, Contractor will provide supporting documents, advice and assistance to other jurisdictions in California wishing to implement this version of municipal financing.

The Program will be enhanced to align with the State's *SEP Guidelines*<sup>14</sup>, as well as DOE's Guidelines for Pilot PACE Financing Programs<sup>15</sup>. All tasks in this Agreement will be undertaken with the goal of creating the most reliable program possible to address the concerns raised by the FHFA and OCC. The Program will demonstrate the viability and replicability of the PACE model for residential retrofits throughout the State, providing a reliable source of data on PACE-assessed properties.

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<sup>13</sup> Attachment 1 to the LGC/Energy Commission Agreement

<sup>14</sup> <http://www.energy.ca.gov/2009publications/CEC-150-2009-004/CEC-150-2009-004-CMF-REV2.PDF>

<sup>15</sup> [http://www1.eere.energy.gov/wip/pdfs/arra\\_guidelines\\_for\\_pilot\\_pace\\_programs.pdf](http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf)

Contractor estimates a minimum of \$1,000,000 in savings to Program customers over the life of the Agreement, as well as hundreds of kW of clean generation production from projects funded by the Program. With ARRA SEP funding augmenting the Program, property owners are expected to save 4,530,000 kWh and 358,750 therms.

The goals of this Agreement are to use the funding to 1) design and implement strategies and *Energy Upgrade California* elements to attempt to address the FHFA concerns over PACE financing, and 2) achieve specific objectives of the ***Energy Upgrade California Program*** and to augment and improve Contractor's existing program by incorporating specific elements of the Energy Upgrade California Program (see Table 4 above) into the SCEIP Program design and administration, which cannot be funded in the absence of the Agreement. Specific goals of the Agreement include:

- Pooled Bonding/Financing - Implementation of *Energy Upgrade California* Element 1 through a funding and investigation of various potential bonding and other financing strategies, including a pooled bonding strategy, and potentially implementing one of these strategies as appropriate, leveraging SCEIP's existing \$32 million assessment contract portfolio. Research all relevant bonding and financing strategies appropriate to the current situation, and implement one or more strategies as appropriate and possible. The goal of this activity is to enable programs using the SCEIP PACE model to bring their program assessments to market in a bond or other financing method more quickly when program need requires, ensuring the continued viability of the programs by replenishing their available funding pool. The benefit of developing a pooled bonding model will be to help create a viable source of liquidity in the secondary financial markets. Once established, it is anticipated that a secondary market for energy assessment financing will help to drive down overall costs for energy assessment financing, and will provide an easily accessible ongoing source of funding for PACE type programs. And, perhaps most importantly, as the cost of financing for property owners is decreased, so is the perceived risk of default to FHFA (Fannie Mae/Freddie Mac) decreased. In turn, as time progresses and there is a continued growth of actual data demonstrating the success of energy financing as a means of decreasing first mortgage default rates, then the perceived risk of default by properties with energy assessment financing should be alleviated. Additionally, a pooled bonding approach will allow the FHFA to see a diverse sample of participants and monitor the levels of defaults from a large group of program participants. Over time, as the FHFA discovers that there may not be an increase in tax sales or mortgage defaults associated with properties in the program as compared to properties not participating in the program, the FHFA may become more comfortable with the creditworthiness of homeowners involved in PACE programs. Pooled Bonding may achieve this by pooling contracts rather than trying to drive an individual and potentially smaller program to a marketable scale before bonding. The Contractor estimates that a \$20,000,000 bond issuance may be the appropriate size for the bond market, and this is a large amount of financing to carry before replenishing program funds

through refinancing/issuance. Other financing and bonding strategies may provide acceptable interest rates in smaller dollar amounts, and these will be investigated as well.

A key element of a pooled bonding approach will be strategic considerations of new and as yet, untested financing structures. For that reason, outside financing and bond experts will need to be engaged to examine the issues and arguments related to this new financial instrument. The specialized areas of focus that require specialized expertise include; structuring senior/subordinate series of bonds, contractual assessment revenues bonds and securitizations, ability to develop bond and disclosure documents for private placements and public offerings, and the ability to provide bond and tax opinions and other areas of expertise. All of these services are specific to municipal finance and will greatly impact the salability of any proposed future financing and help to determine how to best achieve liquidity in the secondary markets while assuring investors of a relatively low risk investment. Because this is an untested market, experienced consultants are best suited to assisting with this unique approach to acquiring secondary liquidity in a regional type bond structure.

Lastly, it will be key for a successful secondary market transaction to develop a strong credit rating to help obtain the lowest possible interest rates. Because the credit for AB 811 financing will be a new and untested credit that market participants are unfamiliar with and will likely include both traditional municipal elements in addition to structured finance, it will be important to introduce the credit to rating agencies in an effective way. Many rating analysts determining creditworthiness of AB 811 types of financing are not familiar with both municipal finance and structured finance and will need additional education to become comfortable with the credit. Even rating analysts that specialize in municipal finance may not be familiar with the intricacies of the credit such as the Teeter Plan, which is a key credit strength, because it is so specific to California counties. High credit ratings will result in increased interest by investors for the transactions and will result in a more competitive environment resulting in the lowest cost of financing possible. Rating analyst's initial positive introduction and response to the credit is essential to the viability of PACE programs for both the short and long term.

- Hub Tool - Implementation of *Energy Upgrade California* Element 2 by working with the IT Program Administrator to deliver the PACE finance processing and work flow tools required for PACE program delivery, as well customization of the statewide web portal to provide a local HUB of all relevant environmental, efficiency, and clean generation programs and resources. The design, testing, implementation and maintenance of the customized web portal will be included as part of the Energy Upgrade California contract. SCEIP will have a consultant role. Being in the unique position of an up-and-running PACE program, with a warehouse of actual program data, Sonoma County has specific needs to enhance operations and replicate the PACE model. Funding of this activity will enable consultation with the *Energy Upgrade California* web developer in the

delivery of a priority set of solutions: the integration of the SCEIP outward-facing website and resources with *Energy Upgrade California* and emerging programs, creating the local HUB resource; application tracking and data collection services; a processing tool for applications in back of house operations; the final steps of tracking and reporting on data associated to project and program costs such as payback, GHG emissions reductions, energy and water savings; and the calculation and reporting of job-years created through projects funded by the program. This deliverable will be the foundation of the back-of-house program management needs for replicating the PACE Model. This set of solutions may require, if approved by the Energy Commission, priority action by the IT Program Administrator for development or purchase of a third party plug-in solution as part of this activity.

- PACE Replication -. Sonoma County will provide technical support and sample documents, such as application forms and materials, RFQ/Ps, contracts, resolution language, case studies, best practices, and lessons learned, for the development of the PACE Replication Model Startup Kit for other jurisdictions interested in implementing residential PACE. Sonoma County will also engage in outreach activities specifically targeted to other local governments that will provide them with information on PACE program replication. All members of the SCEIP Program Management Team and Steering Committee with the support of the program vendor Advisory Councils and local partners will be engaged in the enhancement of the PACE program to enhance SCEIP with the strategies and Elements of *Energy Upgrade California* to sustain and develop operation and provide a replicable model for PACE pending resolution of the federal determinations. These enhancements are designed to provide a replicable model for expansion to other regions in California.
- Marketing, Education and Outreach (MEO) - To enhance SCEIP with key Energy Upgrade California elements listed in Attachment 1, a number of the ENERGY UPGRADE CALIFORNIA Elements will require adjustments to the Program's current workflow and marketing. The Marketing, Education and Outreach (MEO) task will deliver the implementation of ENERGY UPGRADE CALIFORNIA Elements 4, 6 and 8. Through MEO of new program elements and loading order requirements, and an emphasis on the benefits of audits to create energy plans for residents, funding will help educate consumers, contractors, and local businesses about program changes and improvements, ensuring the continued performance and success of the SCEIP program while smoothly integrating enhancements and changes. Execution of this activity will further support the current messaging SCEIP provides to stakeholders and participants concerning the recent statements by the FHFA and potential impacts to the lien holder(s). MEO guidance will also be provided to local jurisdictions that may have an interest in replicating the PACE model in their regions.
- Single Family Residential Line of Credit Program - Since program inception, the SCEIP program averages between \$2.5 million and \$1.25 million in monthly

assessments with seasonal variations. While this program has resulted in countless benefits for the County and State, it remains inaccessible to some small contractors due to the program bonding structure. As SCEIP issues bonds on a once monthly basis, contractors are often left carrying the cost of projects they complete for as long as 45 days. To address this, Sonoma has proposed implementing a line of credit fund that would essentially act as a revolving loan to the SCEIP program to fund project upon completion between the monthly bonding process.

- Energy Ratings and Audits Program - Implementation of *Energy Upgrade California* Element 5 with the addition of a home energy rating and energy auditing program phased in over a short and reasonable timeframe and in conjunction with the MEO strategy explaining the benefits of ratings/audits and their uses, bringing existing program participants into the new model without damaging or slowing the SCEIP program. SCEIP will provide rebates for HERS II rating and verification and include net cost of verification/rating beyond the amount rebated in financing and will work with local real estate industry and multiple listing services to make rating and retrofit information available to the market. Rating and audit costs will be partially underwritten for SCEIP and RCPA Regional Retrofit customers, and the subsidy will decline over time as early adopters prove the concept and the education of the public on the concept takes hold.

All of the goals of this Agreement will combine to create a more complete and replicable program model, designed to withstand external challenges to PACE mechanisms in the residential retrofit market that can be adopted successfully by other jurisdictions across California and the nation. Specific *Energy Upgrade California* elements not listed here are already viable components of SCEIP, are outside the scope of this Agreement (such as elements related to multi-family and commercial properties), and/or are incorporated in the web portal implementation.

### **Commercial PACE**

This Program will finance pilot activities of the Los Angeles Commercial Building Performance Partnership (LACBPP) as a pilot program under Energy Upgrade California, the statewide energy efficiency program. The LACBPP is an innovative, commercial-only, owner-arranged PACE financing program—in collaboration with Los Angeles Department of Water and Power (LADWP). The LACBPP will also partner with the Clinton Climate Initiative (CCI) and fund a consultant, Sustento Group LLC, to actively communicate with local governments around the state to encourage the adoption of the “owner-arranged” commercial PACE model, starting with Placer County and the City and County of San Francisco (San Francisco).

The LACBPP will accelerate the adoption of efficiency and renewable energy products, services, and practices by promoting comprehensive retrofit and retro-commissioning of, at minimum, 13.3 million square feet of commercial property in approximately 33 building projects in Los Angeles and additional square footage in projects in Placer

County, San Francisco and other communities in the state. The LACBPP will also serve as a model commercial PACE program that can be replicated by interested local governments. Program activities funded by this Agreement will address the financial barriers traditionally faced by LACBPP participants and the implementation needs of local governments to ensure the Program's sustainability and replicability. Furthermore, the LACBPP will be designed to allay the concerns of the OCC and to comply with DOE's Guidelines for Pilot PACE Financing Programs<sup>16</sup>, which are intended to provide protection to program participants, lenders and investors.

The LACBPP provides an "owner-arranged" tax lien financing model for retrofits of large commercial properties, through which individual commercial property owners can negotiate financing from lenders on terms, scale and schedule that best suits the project, and secure repayment through a contractual assessment that sits in first position on the building's property tax bill. The OCC's concerns about PACE appear to stem from the fact that in most other PACE programs, a municipality is underwriting the projects and issuing the loans itself, which could be perceived as risky since municipalities are not in the business of underwriting complex real estate transactions. However the LACBPP relies on sophisticated parties (mortgage holder, commercial property owner, retrofit lender) to negotiate the terms of a given financing, and mortgage-holders would only grant consent to PACE liens if they are confident that the lien will not impair the borrower's ability to meet their existing obligations. The LACBPP will also recommend, as a condition of approval, that projected savings exceed the debt service throughout the repayment period, adding another level of security.

Under this model, commercial property owners would submit an intake package, which will include: a project summary, property information summary (and PNA), list of measures, project costs, projected energy savings, amortization schedule, measurement and verification plan, project organizational chart, contractor information, utility incentives/rebates applied for, and the proposed lender(s). Projects must be structured such that the energy savings cover or exceed the cost of the newly-created special assessment during the term of the loan. As part of the application process, the Contractor will verify that the owner is current on all property taxes and assessments, and that the project meets other program requirements (to be provided in Implementation Plan) in order have the proposed retrofit loan secured by a contractual assessment through the LACBPP. Once the Contractor determines that the proposed retrofit plan qualifies, it will notify the local government administering the commercial PACE financing program, which will issue bonds<sup>17</sup> that will be privately placed with the investor selected by the commercial building owner. Upon placement of the bonds with the investor, the local government will place a contractual assessment on the property tax bill in the amount of the total financing due in the current tax period.

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<sup>16</sup> [http://www1.eere.energy.gov/wip/pdfs/arra\\_guidelines\\_for\\_pilot\\_pace\\_programs.pdf](http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf)

<sup>17</sup> The county plans to use the authority provided by the California Improvement Bond Act of 1915 (California Streets and Highways Code section 9000 et. seq.) to privately place bonds to fund commercial retrofit projects and levy a special assessment as security for repayment of the bonds.

To meet the objective of serving as a model for commercial PACE programs, the LACBPP will prepare guidance packages so other local governments can benefit from the experience of Los Angeles' market-driven approach and replicate the model with minimal up-front cost. The guidance packages will include example program marketing/outreach materials, contracts, applications, RFQ/Ps, resolution language. The LACBPP will also identify best practices, document lessons learned, and provide case studies of the actions that took place and outcomes for specific successful building retrofit projects.

In addition, the Clinton Climate Initiative (CCI), a key partner of the LACBPP, will assist in the development of the guidance package, which will be used to communicate with local governments around the state to encourage the adoption of "owner-arranged" commercial PACE model. CCI provides support to building owners such as city governments, commercial portfolio owners, schools, universities, and public housing authorities in identifying, designing, and implementing large-scale energy efficiency retrofit projects and brings the owner together with the necessary contracting and financial firms for implementation. CCI has helped initiate more than 250 retrofit projects encompassing over 500 million sq ft of building space in more than 20 cities around the world., including commercial building retrofit projects in cities such as Chicago, New York, Bangkok, Mumbai, and Johannesburg. While CCI will provide high level guidance, advice, and support, because of its charter it will focus primarily on working with C40 cities (Los Angeles, and San Francisco), and will deliver support via web-based meetings and working sessions. Sustento Group LLC will be available to provide deeper hands-on support to interested local governments. The Contractor, Sustento Group, and CCI will work with Placer County and San Francisco as the first local governments seeking to model their commercial PACE programs after the Program.

The Contractor will use Agreement funds for the following activities:

- **Loan Loss Reserves:** The widespread implementation of the commercial tax lien energy retrofit program is contingent on retrofit lenders actually lending to interested commercial building owners, and on first mortgagees consenting to the financing. Currently, lenders often require a 5% loan loss reserve to provide additional security. In order to provide first mortgagees and retrofit lenders additional comfort, Agreement funds will be leveraged 20:1. This would translate into, at minimum, 13 million square feet of funded projects, or approximately 33 commercial building projects, leading to the creation of 228 jobs and the reduction of 39,720 tons of greenhouse gas (GHG) emissions per year<sup>18</sup>.
- **No-Cost Existing Building Retro-commissioning (RCx) Phase I and Phase II Energy Audits:** Agreement funds will be combined with funds allocated from the City of Los Angeles' Energy Efficiency and Conservation Block Grant (EECBG) formulation allocation. The Contractor will provide no-cost Phase I Scoping Energy Audit for participating commercial building owners. Phase I Scoping

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<sup>18</sup> According to DOE Benefits Calculator.

Energy Audit will include an ASHRAE Level 1 walkthrough, Energy Star benchmarking (in coordination with LADWP), formulation of recommended energy / water conservation measures and low/no-cost operational improvements (RCx), and assistance in applying for relevant rebates and incentives. The Program Administrator will be a sub-contractor and, its subcontractor team will provide Energy Star benchmarking and assistance with rebates and incentives, while energy audit sub-contractors will conduct the ASHRAE Level 1 audits and assist in formulating recommendations. To ensure consistency of quality and appearance, all Phase I reports to the participating commercial property owners will come from one specialist vendor, subcontracted to the Program Administrator. In addition to Phase I Scoping Energy Audits, for buildings over 50,000 square feet, the Program will fund Phase II Investment Grade Analyses (IGA) for commercial building owners who agree to thoroughly explore PACE and other project financing options. Phase II IGA will include detailed engineering analysis of potential energy / water conservation measures (ASHRAE Level II and III analysis), development of an accurate price on the scope of work proposed, and detailed cost and savings projections for each energy and water conservation measure (EWCM). Projects that are not able to secure financing or that do not present near term opportunities for capital upgrades will be referred to the LADWP retro-commissioning program for rebates on implementation of commonly identified retro-commissioning measures. No-cost energy audits will enable commercial building owners to make well-informed decisions leading to more cost-effective retrofits while boosting participation in the Program and generating a rich data set of pre- and post-retrofit information for improving energy efficiency in commercial buildings.

- **Marketing and Outreach Activities: \$100,000.** As the Program is market-based, its success depends on stakeholder awareness and understanding of the Program and the benefits of energy efficiency. Funding for additional marketing and outreach will enable the Contractor to more effectively educate the real estate community and boost Program participation and project effectiveness. The marketing and outreach activities must be consistent with and supportive of the statewide Energy Upgrade California Program that includes a web site and media and marketing activities and materials.
- **Administration and Program Start-Up Costs:** The Contractor must hire professional and technical consultants to establish the Program and associated information technology infrastructure, and to fund additional staff to administer the Program once it is established.
- **Technical Assistance for Pilot Program Replication:** supplemented by CCI pro bono resources. The Contractor, LAPM, and CCI will support other regions in California interested in establishing commercial PACE programs modeled on the Contractor's pilot, starting with Placer County and San Francisco. This support will include staff time and provision of guidance documents. Because all guidance documents will be made available, LAPM's involvement with other local



governments would entail holding meetings with appropriate staff to help them understand the program model, providing assistance in locating a qualified Program Administrator, making introductions to providers of capital, and hands-on project development support for owners of large commercial properties interested in applying to the Program. Initial meetings may be conducted in person, but most LAPM and CCI interaction will occur via phone/web conference in order to maximize CCI's reach to provide support to multiple local governments given the available financial resources.

### **III. Funding**

This Agreement is funded by the American Recovery and Reinvestment Act of 2009 (ARRA). The United States Department of Energy (DOE) has allocated the California Energy Commission (Energy Commission) \$226 million in ARRA funding for the State Energy Program (SEP).

Under this Agreement, the Energy Commission is initially providing \$33 million in SEP funds, with the option to increase funding up to \$38 million. This amount may be further augmented during the term of the Agreement, if other SEP funds become available, to expand the number of incentives offered and/or to increase the number of local jurisdictions that may participate as "Program Plus" counties, and other components of the Program. These funds will be leveraged with additional federal, state, local and other funding to establish the Program. The first phase of the statewide Program and its financing pilots described herein are scheduled to begin in fall 2010. After the first successful Critical Program Review(CPR), the Program may be expanded to increase available services, offer more financial incentives, and/or offer inclusion, including regional coordination and incentives, for other interested California cities and counties that agree to Program terms and provide appropriate leverage. This expansion will be contingent upon adequate funding under this Agreement and leveraged funding, and a supplement to the Implementation Plan describing the details of the expansion, as appropriate.

### **IV. Program Activities**

The Program will be administered on the Energy Commission's behalf by the Local Government Commission (LGC). *Energy Upgrade California* is a statewide program making certain elements available to all fifty-eight counties in the state, including: information regarding energy efficiency, renewable generation and water efficiency in a one-stop shop integrated web portal; and education, outreach and marketing. Those receiving only this level of services are "Program Basic" counties. The remaining enhanced program element will be available only in select "Program Plus" counties as noted in Table 4. The list of Program Plus counties is preliminary and may not reflect the final list of counties that receive Program Plus services under this Agreement. Regional pilots will focus on PACE Financing. The counties currently included in each category are identified in Table 4:

**Table 4: Preliminary County Classification**

|    | <b>Program Basic</b> | <b>Program Plus</b> | <b>Pilot</b>       |
|----|----------------------|---------------------|--------------------|
| 1  | Alpine               | Alameda             | Sonoma             |
| 2  | Amador               | Contra Costa        | Los Angeles (City) |
| 3  | Butte                | Del Norte           | Placer             |
| 4  | Calaveras            | Fresno              | San Francisco*     |
| 5  | Colusa               | Humboldt            |                    |
| 6  | El Dorado            | Kern                |                    |
| 7  | Glenn                | Lake                |                    |
| 8  | Imperial             | Marin               |                    |
| 9  | Inyo                 | Mendocino           |                    |
| 10 | Kings                | Monterey            |                    |
| 11 | Lassen               | Napa                |                    |
| 12 | Los Angeles          | Placer              |                    |
| 13 | Madera               | Riverside           |                    |
| 14 | Mariposa             | Sacramento          |                    |
| 15 | Merced               | San Benito          |                    |
| 16 | Modoc                | San Bernardino      |                    |
| 17 | Mono                 | San Diego           |                    |
| 18 | Nevada               | San Francisco       |                    |
| 19 | Orange               | San Joaquin         |                    |
| 20 | Plumas               | San Luis Obispo     |                    |
| 21 | Shasta               | San Mateo           |                    |
| 22 | Sierra               | Santa Barbara       |                    |
| 23 | Stanislaus           | Santa Clara         |                    |
| 24 | Sutter               | Santa Cruz          |                    |
| 25 | Tehama               | Siskiyou            |                    |
| 26 | Tuolumne             | Solano              |                    |
| 27 | Yuba                 | Trinity             |                    |
| 28 |                      | Tulare              |                    |
| 29 |                      | Ventura             |                    |
| 30 |                      | Yolo                |                    |

\*Placer and San Francisco are listed in both the Program Plus and Pilot categories.

The specific activities funded by this Agreement in each county may vary, as specified in the Implementation Plan to be developed by LGC which will allow them to successfully develop and implement necessary technical and programmatic

components under this framework. This Agreement will fund the development and implementation of *Energy Upgrade California*, including these elements:

- **Innovative Financing Pilot Programs;**
  - Statewide subsidy fund which will be available to local government financing programs via application, which may include an interest rate buy-down and/or a loan loss reserve fund or other credit enhancement mechanism
  - Four PACE pilot programs to test the current viability of PACE financing
- **Statewide integrated web portal and branding** to facilitate consumer access to all programs, incentives and financing
- **Regional priorities** for Program delivery
- **Contractor credentials** to promote maximum BPI accreditation and certification
- **Quality Assurance** of energy rater and installation standards
- **Participant recruitment and outreach** targeted at property owners, contractors, potential green labor force participants, real estate groups, local governments, business organizations and other stakeholders as appropriate
- **Workforce development** to support programs for energy raters and building performance contractors
- **Loading order** to ensure 10 percent energy savings before renewable generation measures are installed
- **Multi-family** to coordinate the Program with existing efforts in multi- family and affordable housing
- **Commercial** to implement PACE financing and energy audit approaches approved by the Energy Commission including retro-commissioning
- **Leverage** to identify and maximize all complementary programs and resources
- **Sustainability** through sound Program leadership, implementation and administration, and sustainability planning for an enduring Energy Upgrade California Program
- **Verification of energy savings** through job and project tracking, monitoring and evaluation of Program progress, and reporting of energy savings and GHG reductions

See Attachment 1 for a more detailed description of each Program element.

## V. Program Team

The Program Team includes:

- Local Government Commission (LGC- Contractor)
- Ecology Action (EA) (Major Subcontractor #1, Agreement Administrator and Program Coordinator)
- Renewable Funding (RF) (Major Subcontractor #2, Information Technology (IT) Program Administrator)
- MIG Corporation (MIG) (Major Subcontractor #3, Marketing and Communication Provider)
- County of Sonoma (CoS) (Major Subcontractor #4, Residential PACE Pilot Program Lead)
- Community Development Department of Los Angeles (CDD / LA) (Major Subcontractor #5, Commercial PACE Pilot Program Lead)

### A. LGC - Contractor

The Local Government Commission (LGC) is a nonprofit, nonpartisan, membership organization that provides inspiration, technical assistance, and networking to local elected officials and other dedicated community leaders who are working to create healthy, walkable, and resource-efficient communities. The LGC's membership is composed of local elected officials, city and county staff, planners, architects, and community leaders who are committed to making their communities more livable, prosperous, and resource-efficient.

LGC assists local governments in developing and implementing policies and programs that help establish these key elements by facilitating conferences, regional workshops and other partnering opportunities; producing guidebooks, videos, slide shows, and several monthly newsletters that share policy and project ideas; providing an extensive resource library run by qualified staff; providing an e-mail alert service that shares information on available state and federal grants.

LGC will serve as the Prime Contractor and Program lead under this Agreement and will work with the Program Team to facilitate a sufficient number of energy and water efficiency retrofits and renewable energy installations that meet or exceed the DOE program cost effectiveness goal<sup>19</sup> and develop workforce infrastructure supporting a robust retrofit market in California. The detailed Implementation Plan will provide specific objectives for numbers of property owners and installation contractors a) taking advantage of incentives offered under this contract (including, but not limited, to training scholarships and audit/verification rebates), b) applying for financing under this program and c) receiving financing to accomplish energy efficiency retrofits and renewable energy installations.

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<sup>19</sup> Identified as 10,000,000 million source BTUs in energy savings per \$1,000 of ARRA funds spent.

In addition, LGC will serve as the Program Administrator for the statewide subsidy fund. LGC will work with the California Energy Commission to develop eligibility requirements for the Fund that ensure the subsidy supports rigorous energy upgrade financing programs in line with the *Energy Upgrade California* program objectives.

LGC will:

- Manage and oversee all Program and administrative responsibilities of this Agreement
- Serve as the primary Program contact on behalf of the Program Team;
- Work with Ecology Action, Renewable Funding, MIG and other subcontractors to administer the statewide Program, achieve Program goals, and ensure that transparency, reporting, and time criticality requirements are met; and
- Work with the Energy Commission to develop eligibility requirements for the statewide subsidy fund, solicit appropriate vendors to support the program including a third party trustee to hold the fund, and manage enrollment of local governments through an open application process.

## **B. Ecology Action (Major Subcontractor #1)**

Ecology Action is a nonprofit environmental consultancy delivering education services, technical assistance, and program implementation for initiatives that assist individuals, business and government to maximize environmental quality and community well-being.

Since 1970, Ecology Action has combined municipal, foundation, and private funding to establish conservation programs, prove their effectiveness financially and operationally, and establish each program as a permanent community resource.

Ecology Action will:

- Assist LGC with administration of the Program by carrying out the day-to-day tasks under this Agreement
  - In collaboration with the Program Team, troubleshoot unforeseen Program implementation challenges;
  - Prepare invoices and reports for this Agreement; and
  - Coordinate the development and implementation of the Program Sustainability Plan.
- Serve as Program Coordinator
  - Provide Program staff (Community Coordinators) in “Program Plus” counties as noted in Table 4;
  - Conduct locally-appropriate outreach and Program promotion specifically in “Program Plus” counties that will coordinate with the generalized statewide outreach and promotion provided by MIG;
  - Ensure applicable utility and Energy Commission quality assurance requirements are met throughout the state;
  - Coordinate, monitor and report on Program implementation activities;

- Coordinate with Renewable Funding to ensure the integrated web portal list of incentives and rebates contains up-to-date local retrofit program and financing information;
  - Coordinate and link complementary Program activities to the Energy Commission's Comprehensive Residential Building Retrofit Program and Municipal and Commercial Building Targeted Measure Retrofit Program; and
  - Coordinate and link complementary Program activities to relevant utility, ARRA and other energy efficiency retrofit programs in California.
  - Provide administrative oversight of the four PACE Pilot programs.
- Serve as Program Advisory Committee (PAC) Facilitator, Local Government Advisory Committee (LGAC) Liaison and Technical Advisory Committee (TAC) Coordinator
    - Provide overall coordination and organizational support for the Program Advisory Committee (PAC), Local Government Advisory Commission (LGAC) and Technical Advisory Committee (TAC), which shall represent the program team and "Program Plus" counties;
    - Ensure the PAC, LGAC and TAC meetings are conducted consistent with the California Open Meeting Act of 2004;
    - Support the PAC through committee facilitation and administrative assistance;
    - Engage appropriate City and County representation on the LGAC; and
    - Convene, coordinate and facilitate active stakeholder participation in the TAC.

### **C. Renewable Funding (Major Subcontractor #2, IT Program Administrator)**

Renewable Funding provides technology services for clean energy programs that serve both residential and commercial property owners. Renewable Funding's technology service is a highly configurable platform that allows local governments to rapidly develop and launch clean energy programs. The platform provides both an easy to use interface for property owners and software for program managers to operate, track, and measure their programs. The platform integrates program services (such as incentives and promotions) and local contractors with the property owner's project workflow. This simplifies the retrofit process for property owners while allowing program managers to track, evaluate, and report on program metrics.

Renewable Funding will assist in developing and implementing the technological aspects of the Program under the direction of and oversight from Energy Commission and LGC. Renewable Funding will:

- Provide technical information to assist in designing and defining requirements of the technological components of *Energy Upgrade California* integrated web portal;
- Develop and implement the technological components of the *Energy Upgrade California* integrated web portal, as directed by the Commission;

- Provide reporting and tracking data on the integrated web portal activities to the Energy Commission, the Program Team and local government stakeholders; and
- Participate in Energy Commission Program Team and Stakeholder meetings and events to ensure alignment of the technological components of *Energy Upgrade California* integrated web portal
- All of the above work will be done at the direction of and with oversight from Energy Commission and LGC with substantive review of all aspects of RF's work product.
- RF will not be responsible for directing staff at Energy Commission, will not negotiate or enter into any contracts for Energy Commission, nor will it make any governmental decisions on behalf of Energy Commission.

#### **D. MIG (Major Subcontractor #3)**

Founded in 1981, MIG has focused on planning, designing and sustaining environments that support human development. MIG embraces inclusivity and encourages community and stakeholder interaction in all of its projects. MIG adopts a strategic, context-driven and holistic approach to address social, political, economic and physical factors in its projects to ensure client satisfaction.

MIG will work with California Energy Commission, Renewable Funding and Ecology Action to develop and manage the state wide *Energy Upgrade California* consumer and partner education, communications and supportive marketing:

- Develop and coordinate the *Energy Upgrade California* statewide marketing, communication and education strategies and materials;
- Work with Renewable Funding to enhance the user interface for the *Energy Upgrade California* integrated web portal;
- Integrate *Energy Upgrade California* and integrated web portal with the investor owned utility State-wide marketing, education and outreach program and website known as Engage 360; and
- Build on existing coordination and efforts in partnerships with local governments, building and trade organization, other industry groups to maximize consumer understanding of contractor best practices, listing, job training and other related retrofit information.

#### **E. County of Sonoma (Major Subcontractor #4)**

The County of Sonoma is a national leader in residential municipal financing programs for energy and water efficiency and renewable energy retrofit projects. Specifically, it has a proven track record with its Sonoma County Energy Independence Program (SCEIP), which has been leveraging Property Assessed Clean Energy (PACE) financing mechanisms since March 2008 to reduce the cost of borrowing to consumers and the risk of lending to lenders. SCEIP is currently the only fully operating PACE program in California.

County of Sonoma will:

- Examine programmatic, political and local policy options that could be employed to establish and test the viability of a PACE model that maintains a goal to address the issues raised by FHFA concerning PACE programs
- Align the residential PACE pilot with DOE's Guidelines for Pilot PACE Financing Programs and other guidelines specified by the Energy Commission;
- Investigate regional bonding strategies to enhance program sustainability in light of the FHFA determination;
- Support replication of a residential PACE model that maintains a goal to address current and evolving FHFA determinations, by producing and sharing program documents and providing technical support to other interested counties;
- Include quality assurance, loading order, workforce development and other requirements of the statewide program within the regional pilot;
- Coordinate with Renewable Funding on the integrated web portal;
- Coordinate with MIG and Ecology Action on outreach and marketing as appropriate;
- Provide technical support to regional governments, seeking to establish residential PACE programs even in light of the FHFA determinations; and
- Timely report pilot program metrics

#### **F. Community Development Department of Los Angeles (CDD/LA) (Major Subcontractor #5)**

The Community Development Department of the City of Los Angeles (CDD/LA) has been improving the quality of life for City residents for nearly 30 years by offering economic, social and employment opportunities for individuals, families and neighborhoods. The City of Los Angeles is consolidating both the SEP funded and EECBG funded ARRA programs under the CDD / LA to support the greatest program integration and cross program leverage possible.

For this pilot program CDD/LA is embracing an "owner-arranged" assessment lien financing model for retrofits of large commercial properties, through which individual commercial property owners can negotiate financing from lenders on terms, scale and schedule that best suit the project, and secure repayment through a contractual assessment recorded as a priority lien that is repaid through the property's tax bill. This program provides alternative financing that utilizes sophisticated parties (mortgage holder, commercial property owner, retrofit lender, municipal finance professionals) to negotiate the terms of a given financing. The program applicant will be required to secure mortgage-holders' explicit written consent to a PACE lien before a PACE financing will be funded through the program. The program will also require, as a condition of approval, that projected savings exceed the debt service throughout the repayment period, adding another level of security. In the event that PACE financing is prohibited or untenable due to unforeseen circumstances, an amendment may be made, upon receiving consent from the Energy Commission, to include alternative financing models.

CDD/LA will:



- Align the commercial PACE pilot with DOE's Guidelines for Pilot PACE Financing Programs and other guidelines specified by the Energy Commission;
- Use an "owner-arranged" tax lien financing model for retrofits of large commercial properties;
- Collaborate with Los Angeles Department of Water and Power (LADWP) to ensure appropriate retro-commissioning of each participating commercial building
- Provide no-cost retro-commissioning Phase I and II energy audits to qualifying commercial building owners
- Coordinate with Renewable Funding on the integrated web portal
- Coordinate with MIG and Ecology Action on outreach and marketing as appropriate
- Include quality assurance, loading order, workforce development and other requirements of the statewide program within the regional pilot
- Support replication of the commercial PACE pilot by producing and sharing program documents and providing technical support to regional governments, starting with Placer County and the City and County of San Francisco, seeking to establish commercial PACE programs based on CDD/LA's model
- Timely report pilot program metrics

CDD / LA has taken over the implementation of this task from the City Redevelopment Agency of Los Angeles (CRA / LA.) CRA / LA was originally under contract with the CEC to implement the Commercial PACE pilot program in the City of Los Angeles, but the passing of AB 26 and AB 27 (2011) have left the activities of the redevelopment agency severely limited. CRA / LA will remain on the agreement for sufficient time to transition the program smoothly to its sister agency, the CDD / LA. At the time of a successful transition, the CCM may choose to terminate the contract with CRA / LA per the terms in Exhibit D.

## **H. Program Advisory Committee (PAC)**

A Program Advisory Committee or Steering Committee (PAC) shall be led by the Energy Commission and be comprised of representatives from the Program Team, the Energy Commission, CPUC, LGC, utilities and the other Energy Upgrade California ARRA funded programs. The PAC will include at least one member from a non-pilot Program Plus county who in addition to LGC and EA will be responsible for acting as a liaison and representing the feedback, opinions and requests of the members of the Local Government Advisory Committees to the PAC. Members of the Program Team will report program progress to the PAC. The PAC may be replaced with a Steering Committee made up of representatives from ARRA programs and key stakeholders, at the discretion of the Commission Contract Manager.

The PAC or Steering Committee will contribute to:

- Integrated web portal refinements;
- Workforce Development improvements;
- Outreach and Communications strategies;

- Sustainability Plan development; and
- Other program components as identified by the Program Team.

## **I. Local Government Advisory Committee(s)**

Local Government Advisory Committees (LGACs) will be made up of representatives from the participating “Program Plus” counties and cities (noted in Table 4). The LGAC’s will be formed in each county or groups of counties (region) and will provide feedback and input to Ecology Action on Program design and administration over the course of this Agreement.

The LGAC will:

- Provide feedback to Ecology Action on locally relevant approaches to the statewide Program design and development, roll out and administration and local marketing/outreach efforts as applicable;
- Participate in regional LGAC kick-off meetings to discuss opportunities for communication and coordination throughout the Program term;
- Contribute the perspectives of local governments to the Program Sustainability Plan; and
- Provide input and advice related to local program roll out and administration, municipal staff training, education and outreach, and customer support.

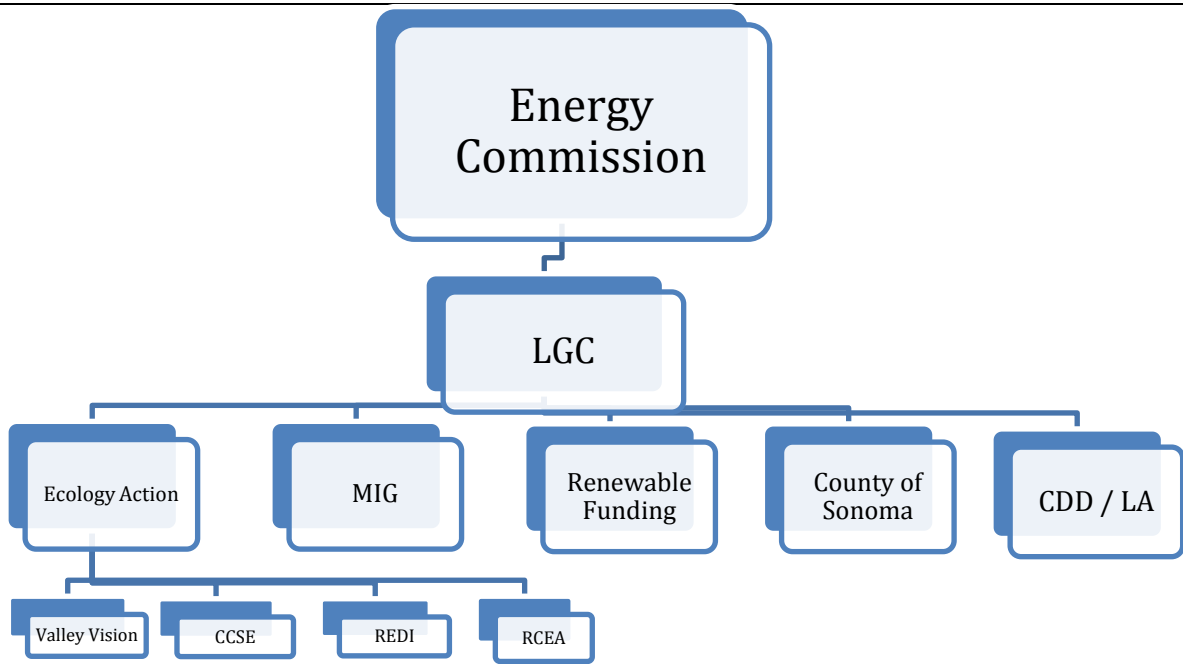
## **J. Technical Advisory Council(s)**

Technical Advisory Councils (TACs) will consist of representatives from workforce development agencies, energy and water utilities, community colleges, businesses, unions, and/or tradespersons, and other appropriate stakeholders and will be formed in “Program Plus” counties, or groups of “Program Plus” counties, and will provide feedback on the most appropriate opportunities for Program engagement, coordination, graduate promotion, and job placement.

The TAC will:

- Provide feedback to Ecology Action on local Program design and development and local marketing and outreach efforts as applicable;
- Inform the Program of relevant local complementary services;
- Inform the Program Team regarding regional Sustainability Plan elements; and
- Assist in promoting the Program.

**Table 2: Program Team Organizational Chart**



## TASK 1.0 ADMINISTRATION

The goal of this task is to execute and oversee administrative duties under this agreement and includes work performed toward the completion of the following major activities:

- A. Kick-off Meeting
- B. Invoices
- C. Monthly Progress Reports
- D. Critical Program Reviews (CPRs)
- E. Final Report
- F. Leveraged Funds
- G. Required Permits
- H. Deliverables
- I. Steering Committee Participation
- J. Prevailing Wage Determination & Weekly Certified Payrolls
- K. Historic Preservation Consultation
- L. Waste Management Plan

### **A. Kick-off Meeting**

The goal of this activity is to establish the lines of communication and procedures for implementing this Agreement.

#### **The Contractor shall:**

- Attend a “kick-off” meeting with the Commission Contract Manager (CCM), the Contracts Officer, a representative of the Accounting Office, and representatives of key subcontractors to review administrative and technical aspects of this Agreement;

The administrative portion of the meeting shall include, but not be limited to, the following:

- Terms and conditions of this Agreement, including use of the *Energy Upgrade California* Identity Mark and Logo, prohibition of KEMA Inc. or its subsidiary known as KEMA Services Inc. from performing services as a subawardee under this Agreement, and the Energy Commission’s rights to intellectual property
- Critical Project Reviews (CPRs)
- Leveraged fund documentation
- Permit documentation
- Training on ARRA SEP reporting requirements
- Compliance with the Davis-Bacon Act
- Compliance with National Historic Preservation Act requirements
- Compliance with Waste Management Plan requirements

The technical portion of the meeting shall include, but not be limited to, the following:

- The CCM's expectations for accomplishing tasks described in the Scope of Work
- An updated Schedule of Deliverables
- An updated Gantt Chart
- Progress Reports
- Technical Deliverables
- The Final Report
- Bring its Project Manager, Contracts Administrator, Accounting Officer, appropriate representatives of the Major Subcontractors and others designated by the CCM to this meeting; and
- Submit the following to the CCM:
  - Updated List of Leveraged Funds
  - Updated List of Permits
  - Updated Schedule of Deliverables
  - Updated Gantt Chart

**Contractor Deliverables:**

- Updated List of Leveraged Funds
- Updated List of Permits
- Updated Schedule of Deliverables
- Updated Gantt Chart

**The Commission Contract Manager shall:**

- Provide an agenda and list of expected participants to all potential meeting participants prior to the meeting;
- Designate the date and location of the meeting; and
- Discuss the administrative and technical aspects of the Agreement with the Contractor and additional participants.

**Commission Contract Manager Deliverables:**

- Meeting agenda
- List of expected participants

**B. Invoices**

The goal of this activity is to tender all invoices in a timely fashion and in conformity with Energy Commission invoicing procedures. In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Oversee and review Ecology Action's preparation and submittal of invoices and supporting documentation for all allowable contract expenses at each stage identified in the Program schedule submitted to the Energy Commission's Accounting Office.

- Monitor payment of all invoices and disburse funds as appropriate.

**Deliverables:**

- Invoices for all allowable project expenses
- Documentation as needed to support invoices

**C. Subcontractors**

The goal of this activity is to manage and coordinate the activities of all project subcontractors, including quality assurance and coordination with the CCM for any new subcontractors added during the term. In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Draft and execute agreements with subcontractors named in the proposal.
- Manage and coordinate subcontractor activities;
- Oversee Ecology Action's coordination of subcontractor activities;
- Notify subcontractors of all applicable terms and conditions, and obtain their agreement to comply;
- Monitor subcontractor performance and compliance; and
- Inform the CCM in writing of any new proposed subcontractors.

**Contractor Deliverables:**

- Notices of new proposed subcontractors
- Draft and final agreements with subcontractors named in the proposal

**D. Monthly Progress Reports**

The goal of this activity is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of the project. This activity includes the mandatory reporting activities for ARRA SEP programs listed in Exhibit E.2.J (Reporting and Registration Requirements Under Section 1512 of ARRA). Monthly Progress Reports will incorporate other reports as agreed to in the Implementation Plan (Task 2.1), and as needed to support other required reporting activities. In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Regularly gather pertinent information from all subcontractors and participating municipalities;
- Prepare Monthly Progress Reports that summarize all Agreement activities conducted by the Contractor for the reporting period, including but not limited to an assessment of the ability to complete the Agreement within the current budget and on schedule, progress toward whole-house retrofit and workforce development goals, and any anticipated cost overruns; and

- Submit each progress report to the CCM within three (3) working days after the end of the reporting period.

**Deliverables:**

- Monthly Progress Reports

**E. Critical Program Reviews (CPRs)**

The goal of this activity is to determine if activities specified in this scope of work, or further detailed in the PACE pilot attachments should continue to receive SEP funding to complete this Agreement and whether any modifications must be made to the tasks, deliverables, schedule, or budget. The first CPR shall be held within the first six (6) months of the Agreement start date to determine the level of funding that is appropriate for the tasks and to ensure work will be completed on schedule. Because a number of critical tasks must occur prior to accepting applications for funding, the first CPR may be held shortly after finalization of the Implementation Plan. At least one additional CPR shall be scheduled later in the term of the Agreement to review ongoing activities.

CPRs provide the opportunity for frank discussions between the Energy Commission and the Contractor. CPRs generally take place at key, predetermined points in the Agreement, as determined by the CCM. However, the CCM may schedule additional CPRs as necessary, and any additional costs will be borne by the Contractor. CPR participants include the CCM and the Contractor, and may include the Energy Commission Contracts Officer, one or more members of the ARRA Committee or their designee, other Energy Commission staff and management, and any other individuals selected by the CCM to provide support to the Energy Commission.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Prepare a report for each CPR that discusses the progress toward achieving the Agreement's goals and objectives. This report shall include recommendations and conclusions regarding continued work of the project. This report shall be submitted along with any other deliverables identified in the Scope of Work. These documents shall be submitted to the CCM and any other designated reviewers at least five (5) working days in advance of each CPR meeting;
- Prepare for each CPR a summary of project metrics attributable to leveraged funding. The summary shall include those metrics not identified in Exhibit E, Attachment 6 (Project Type Metrics). The Energy Commission will use the summary for data gathering purposes rather than for federal reporting. The Contractor must submit the summary under the title, "Program Metrics Attributable to Leveraged Funding." The Contractor shall submit the summary to the CCM at least five (5) working days in advance of each CPR meeting. The summary shall contain the following metrics:
  - Project Type Metrics

- Building energy audits (number of audits performed, floor space audited, and auditor's projection of energy savings)
- Building retrofits (number and square footage of buildings retrofitted)
- Financial incentives for energy efficiency and other covered investments (monetary value of financial incentive provided and total value of investments incentivized)
- Renewable energy market development (number, type, and capacity of renewable systems installed)
- Performance Metrics
  - Energy savings (kWh, therms, gallons, Btu)
  - Renewable energy capacity and generation
- Submit ancillary data and documentation to the CCM, as required; and
- Present the required information at each CPR meeting and participate in a discussion about the Agreement.

**Contractor Deliverables:**

- CPR report (for each CPR)
- Ancillary data and documentation (as required)
- Summary of Program metrics attributable to leveraged funding (for each CPR)

**The Commission Contract Manager shall:**

- Determine the location, date, and time of each CPR meeting with the Contractor;
- Send the Contractor the agenda and a list of expected participants in advance of each CPR. If applicable, the agenda shall include a discussion of both leveraged funding and permits;
- Conduct and make a record of each CPR meeting. One of the outcomes of this meeting will be a schedule for providing the written determination described below;
- Determine whether to continue the project and/or any of the regional pilot projects, and if so, whether to modify the tasks, schedule, deliverables, and budget for the remainder of the Agreement, including not proceeding with one or more planned activities or tasks. If the CCM concludes that satisfactory progress is not being made, this conclusion will be referred to the Energy Commission's ARRA Committee for its concurrence; and
- Provide the Contractor with a written determination in accordance with the schedule. The written determination may include a requirement for the Contractor to revise one or more deliverables that were included in the CPR. The written determination may also include the Energy Commission's decision on the amount of ARRA SEP funds to encumber into the Agreement.

**Commission Contract Manager Deliverables:**



- Agenda
- List of expected participants
- Schedule for Written Determination
- Written Determination

## **F. Final Report**

The goal of this activity is to prepare a comprehensive written Final Report that describes the original purpose, approach, results, and conclusions of the work completed under this Agreement. The CCM will review and approve the Final Report. The Final Report must be completed on or before the termination date of this Agreement.

The Final Report shall include, but not be limited to, a discussion of lessons learned and recommendations for post-ARRA funding sustainability, scalability and replication for the statewide projects and regional pilot projects.

The Final Report shall be a public document. If the Contractor has obtained confidential status from the Energy Commission and will also prepare a confidential version of the Final Report, the Contractor shall perform the following activities for both the public and confidential versions of the Final Report.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

### **The Contractor shall:**

- Prepare a Draft Outline of the Final Report in coordination with other key subcontractors. The CCM shall provide written comments to the Contractor within ten (10) working days of receipt;
- Submit the Final Outline to the CCM once agreement has been reached on the draft outline. The CCM shall provide written approval within five (5) working days of receipt;
- Submit a Draft Final Report to the CCM for review and comment. The CCM shall provide written comments within ten (10) working days of receipt; and
- Submit one bound copy of the Final Report with the final invoice.

### **Deliverables:**

- Draft Outline of the Final Report
- Final Outline of the Final Report
- Draft Final Report
- Final Report

## **G. Final Meeting**

The goal of this activity is to close out this Agreement by discussing findings, conclusions, recommendations, and administrative issues such as final invoicing and release of retention. The final meeting must be completed during the closeout of this

Agreement. This meeting will be attended by, at a minimum, the Contractor, the Commission Contracts Officer, and the CCM. The technical and administrative aspects of Agreement closeout will be discussed at the meeting, which may be two separate meetings at the CCM's discretion.

The technical portion of the meeting will present findings, conclusions, and recommended next steps (if any) for the Agreement. The CCM will determine the appropriate meeting participants. The administrative portion of the meeting shall be a discussion with the CCM and the Contracts Officer about the following Agreement closeout items:

- Final invoicing and release of retention
- "Surviving" Agreement provisions, such as repayment provisions and confidential deliverables
- Preparation of a schedule for completing the closeout activities for this Agreement
- The Energy Commission's request for specific "generated" data (not already provided in Agreement deliverables)
- The need to document the Contractor's disclosure of "subject inventions" developed under the Agreement
- What to do with any state-owned equipment (Options)
- Need to file UCC.1 form re: Energy Commission's interest in patented technology

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- All key subcontractors will meet with the Energy Commission to present the findings, conclusions, and recommendations;
- Prepare written documentation of meeting agreements and all pertinent information; and
- Prepare a schedule for completing the closeout activities for this Agreement.

**Contractor Deliverables:**

- Written documentation of meeting agreements and all pertinent information
- Schedule for completing closeout activities

**The Commission Contract Manager shall:**

- Designate the date and location of the meeting; and
- Send the Contractor final report instructions, an agenda, and a list of expected participants in advance of the meeting.

**Commission Contract Manager Deliverables:**

- Final Report Instructions
- Agenda

- List of Expected Participants

## **H. Leveraged Funds**

The goal of this activity is to ensure that the leveraged funds planned for this Agreement are obtained for and applied to this Agreement during the term of this Agreement.

The costs to obtain and document leveraged fund commitments are not reimbursable through this Agreement. While the budget for this task will be zero dollars, the Contractor may utilize leveraged funds for this task. Leveraged funds must be spent concurrently or in advance of ARRA SEP funds during the term of this Agreement. Leveraged funds must be identified in writing, and the associated commitments obtained before the Contractor can incur any costs for which the Contractor will request reimbursement.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

### **The Contractor shall:**

- Prepare a letter documenting the leveraged funds committed to this Agreement and submit it to the CCM at least two (2) working days prior to the kick-off meeting:
  - For leveraged funds that are part of the proposal that led to the Energy Commission awarding this Agreement, then provide in the letter:
    - A list of the leveraged funds that identifies the amount of each cash leveraged fund and its source (including a contact name, address, and telephone number and the task(s) to which the leveraged funds will be applied).
    - A list of the leveraged funds that identifies the amount of each in-kind contribution, a description, documented market or book value, and its source (including a contact name, address, and telephone number and the task(s) to which the leveraged funds will be applied). If the in-kind contribution is equipment or other tangible or real property, the Contractor shall identify its owner and provide a contact name, address, and telephone number, and the address where the property is located.
    - A copy of the letter of commitment from an authorized representative of each source of cash leveraged funding or in-kind contributions that these funds or contributions have been secured.
- Discuss leveraged funds and implications for the Agreement if they are significantly reduced or not obtained as committed, at the kick-off meeting. If applicable, leveraged funds will be included as a line item in the progress reports and will be a topic at CPR meetings;
- Provide the appropriate information to the CCM if during the course of the Agreement additional leveraged funds are received; and
- Notify the CCM within ten (10) working days if during the course of the Agreement existing leveraged funds are significantly reduced. Reduction in

leveraged funds may trigger an additional CPR.

**Deliverables:**

- Letter regarding leveraged funds or stating that no leveraged funds are provided
- Letter(s) for new leveraged funds
- Copy of each leveraged fund commitment letter
- Letter that leveraged funds were reduced (if applicable)

**I. Required Permits**

The goal of this activity is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track.

Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. While the budget for this task will be zero dollars, the Contractor shall show any leverage funds used for this task. Permits must be identified in writing and obtained before the Contractor can incur any costs related to the use of the permits for which the Contractor will request reimbursement.

The list of permits and the schedule for obtaining them will be discussed at the kick-off meeting, and a timetable for submitting the updated list, schedule and the copies of the permits will be developed. The implications to the Agreement if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in the progress reports and will be a topic at CPR meetings.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Prepare a letter documenting the permits required to conduct this Agreement and submit it to the CCM at least two (2) working days prior to the kick-off meeting:
  - If there are no permits required at the start of this Agreement, then state such in the letter;
  - If it is known at the beginning of the Agreement that permits will be required during the course of the Agreement, provide in the letter a list of the permits that identifies the:
    - Type of permit
    - Name, address and telephone number of the permitting jurisdictions or lead agencies
    - Schedule the Contractor will follow in applying for and obtaining these permits.

If during the course of the Agreement additional permits become necessary, then provide the appropriate information on each permit and an updated schedule to the CCM.

- As permits are obtained (including air quality), send a copy of each approved permit to the CCM.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the CCM within five (5) working days. Either of these events may trigger an additional CPR.

**Deliverables:**

- Letter documenting the Permits or stating that no Permits are required
- Updated list of Permits as they change during the Term of the Agreement
- Updated schedule for acquiring Permits as it changes during the Term of the Agreement
- Copy of each approved Permit (including air quality)

**J. Deliverables**

The goals of this activity are to establish a procedure for the submittal and review of deliverables and to unify the formats of electronic data and documents provided to the Energy Commission as Agreement deliverables.

Where a draft of a deliverable is required, the CCM shall provide written comments to the Contractor on the draft within ten (10) working days of receipt. Once agreement has been reached on the draft, the Contractor shall submit the final deliverable to the CCM. The CCM shall provide written approval of the final deliverable within five (5) working days of receipt. Key elements from deliverables shall be included in the Final Report for this Agreement.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Submit draft and final deliverables to the CCM as required under this Agreement.
- Deliver documents to the CCM in the following formats:
  - Data sets shall be in Microsoft (MS) Access or MS Excel file format.
  - PC-based text documents shall be in MS Word file format.
  - Documents intended for public distribution shall be in PDF file format, with the native file format provided as well.
  - Project management documents shall be in MS Project file format.
- Request exemptions from the electronic file format by submitting a letter requesting exemption at least ninety (90) days before the deliverable is submitted.

- Work with subcontractors and pilot programs to track and collect program deliverables

**Deliverables:**

- Letter requesting exemption from the electronic file format (if applicable)

**K. Advisory Committee or Steering Committee Participation**

The goal of this activity is to facilitate the organization and operation of program advisory committees or Steering Committee to represent the statewide and pilot programs under this agreement. In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Participate in the regular Program Advisory Committee (PAC) or Steering Committee meetings:
  - Provides feedback, opinions and requests from homeowner, local government and contractor stakeholders to the PAC
  - Incorporates PAC recommendations for program improvements and sustainability
- Convenes Local Government Advisory Committees (LGAC) of representatives from “Program Plus” counties and cities:
  - Incorporates LGAC recommendations for program improvements and sustainability
- Convenes Technical Advisory Committees (TAC) of stakeholder representatives from communities in “Program Plus” counties and cities:
  - Incorporates TAC recommendations for program improvements and sustainability
- Participate in ongoing Program Team coordination and planning meetings to guide program development, implementation, continued refinement, documentation and sustainability efforts.

**Contractor Deliverables:**

- Meeting agendas
- Comments to be Summarized in Monthly Reports

**L. Prevailing Wage Determinations and Weekly Certified Payrolls**

*(Applicable only if the Contractor or subcontractors will perform or subsidize installation work)*

The goal of this activity is to ensure that the Contractor and subcontractors pay prevailing wage rates and submit weekly certified payrolls for all workers that perform labor and mechanic work to achieve the goals and objectives of this Agreement.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Submit to the CCM a copy of applicable wage determinations for any and all labor and mechanic work that will be performed to achieve the goals and objectives of this Agreement (including any subcontract) within thirty (30) days of execution of this Agreement. If subcontractors will perform labor and mechanic work, the Contractor must submit a copy of applicable wage determinations to the CCM within thirty (30) days of execution of the subcontracts.
- Submit to the Energy Commission on a weekly basis a copy of all certified payrolls by the Contractor and subcontractors of any tier performing labor and mechanic work to achieve the objectives of this Agreement. Exhibit E.2.M of this Agreement (Davis-Bacon Act and Contract Work Hours and Safety Standards Act) provides the required specifications for certified payrolls.

**Contractor Deliverables:**

- Copies of Applicable Wage Determinations, if Applicable
- Weekly Certified Payrolls, if Applicable

**M. Historic Preservation Consultation**

The goal of this activity is to ensure that the Contractor complies with the requirements of Section 106 of the National Historic Preservation Act (NHPA) prior to expenditure of SEP funds under this Agreement to alter any structure or Site. The Energy Commission has executed a Programmatic Agreement with the California State Historic Preservation Officer (SHPO) to streamline the Section 106 consultation process. Under the Programmatic Agreement, the Energy Commission will evaluate Projects to determine whether they are categorically excluded from the SHPO's direct review and consultation.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Consult with the Energy Commission (and with the SHPO and the Tribal Historic Preservation Officer, if applicable) to ensure that the proposed Project(s) will have no adverse effects on historic resources.
- Prepare a Consultation Package as specified by the Energy Commission and set forth in the Implementation Plan no later than thirty (30) days after the execution of this Agreement or the identification of the Project structure(s) or site(s) to be retrofitted under the Agreement, whichever is later. The Energy Commission may specify an earlier time for submittal of the Consultation

Package if Retrofit work is expected to begin within less than thirty (30) days of Project identification.

**Contractor Deliverables:**

- Consultation Package

**N. Waste Management Plan**

The goal of this activity is to ensure that the Contractor submits a Waste Management Plan to the CCM prior to expenditure of SEP funds under this Agreement on proposed project activities that may generate any sanitary or hazardous waste. The Waste Management Plan must describe the Contractor's plan to dispose of any sanitary or hazardous waste generated by any proposed project activities. Sanitary and hazardous waste includes, but is not limited to: construction and demolition debris, old light bulbs, fluorescent ballasts and lamps, piping, roofing material, discarded equipment, debris, and asbestos. The Waste Management Plan must also describe the categories and estimated volumes of waste that the Contractor anticipates will be generated by any proposed project activities, and the disposal path for each category of waste.

The plan must comply with all federal, state, and local laws and regulations governing waste disposal.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Submit to the CCM a Waste Management Plan for each project no later than thirty (30) days after the execution of the Agreement or the identification of any Projects that may generate waste, whichever is later. The Energy Commission may specify an earlier time for submittal of the Waste Management Plan if Retrofit work is expected to begin within less than thirty (30) days of Project identification.

**Contractor Deliverables:**

- Waste Management Plan



## TASK 2.0 TECHNICAL TASKS/ PROGRAM DELIVERY

The Program Team will work together to plan, implement, and track outcome delivery throughout the Agreement term. As part of this task, the team will develop a detailed Implementation Plan and identify additional activities, deliverables, and due dates.

Activities included under this task are intended to successfully complete the Program at the statewide level, target additional services to Program Plus counties, and support localized efforts related to Innovative Financing Pilot programs. Statewide activities include development and implementation of the statewide implementation plan, development of a statewide finance subsidy program, design and implementation a statewide integrated web portal, statewide *Energy Upgrade California* brand, marketing and communications development, workforce development, and Program reporting. Program Plus services include the development, promotion and implementation of the subsidized contractor training program, HERS II property owner incentive program, and regional coordination and development serving contractor, property owner and local government stakeholders. These services may be expanded statewide upon written approval of the Commission Contract Manager. PACE Financing Pilot Programs include residential and commercial PACE Pilot efforts being pursued in Sonoma County, the City of Los Angeles, the City & County of San Francisco and the County of Placer. Each activity is further described below, including a description of goals, a list of Contractor/Subcontractor activities, and resulting deliverables.

### Task Contingency Plan

All program funds are anticipated to be expended under this task within the contract term. In order to ensure that all contract funds are expended within the term of the contract, funds budgeted for activities outlined in this task may be reprogrammed to support the following activities in accord with the Contingency Plan Protocol described below.

1. Support the delivery, promotion, expansion and/or reprogramming of the Subsidized Contractor Training Program to support workforce development and/or other Contractor outreach activities; and/or,
2. Support the delivery, promotion, expansion and/or reprogramming of the HERS II Property Owner Incentive Program to support workforce development, local government, property owner and/or other stakeholder engagement activities; and/or,
3. Support program sustainability, continuity and transition planning efforts especially related to components such as the web portal, finance subsidy, workforce, outreach, regional coordination or pilot program activities, and/or
4. Support the delivery, promotion, expansion and/or reprogramming of the Statewide Financial Subsidy Program.

### Contingency Plan Protocol:

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

- Modifications pursuant to this Contingency Plan shall be made via a Justification & Implementation Memo that specifies the dollar amount, timing, nature and scope of the reprogramming.
- At least ten (10) business days prior to delivering a Justification & Implementation Memo to the Program Team, the CCM shall consult with the Contractor and the Agreement Administrator to determine whether the remaining budget for this task includes funds in excess of the amount likely to be expended by the contract end date.
- If the CCM, Contractor, the Agreement Administrator agree that the budgeted amount for this task includes funds in excess of the amount likely to be expended by the contract end date, the CCM shall have the authority to reprogram such excess in accordance with the contingency plan priorities described above.
- As directed by the CCM, Contractor will prepare the Justification & Implementation Memo and submit it to the CCM for execution.
- The effective date of the Justification & Implementation Memo shall be at least five (5) business days after the CCM delivers it to the Program Team for execution.

### **Task 2.1 Implementation and Sustainability Planning**

The goal of this activity is to develop detailed Implementation Plan and Sustainability Plans to establish and manage the Program and plan for the continuation or graceful closure of major Program elements at the end of the ARRA funding cycle, , with input and assistance from the Program Team and the CCM. In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this Subtask 2.1. Contractor shall remain responsible for all deliverables.

#### **A. Draft Implementation Plan**

The goal of this activity is to develop a detailed Draft Implementation Plan o establish and manage the Program, with input and assistance from the Program Team and the CCM. In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

#### **The Contractor shall:**

- Work with subcontractors and representatives from pilot programs to prepare a Draft Implementation Plan that includes, but is not limited to, the following:
  - A list of activities that will be conducted to deliver each element of the Program as specified in Attachment 1;
  - Roles and responsibilities of Contractor, Subcontractors, and any other key organizations;
  - Identification of regions for regional coordination;
  - A timeline for the Program that delineates the schedule for each Program activity, such as submittal of monthly invoices, the rollout of water efficiency measures as eligible improvements, and the use of Home Energy Rating

System, Phase Two (HERS II)-certified whole-house home energy raters/energy auditors by July 1, 2011 (this date may be extended upon Energy Commission approval, to adjust for delays in HERS II availability if necessary);

- A plan to ensure that Energy Commission quality assurance requirements<sup>20</sup> are met for all properties receiving *Energy Upgrade California* financing, verifying compliance with quality assurance components of utility and other energy efficiency programs, providing additional quality assurance as necessary and ensuring the quality assurance of projects that are not covered by existing programs consistent with Energy Commission quality assurance requirements;
- An outline for the Program Sustainability Plan to achieve a program that is self-sustaining beyond the terms of this Agreement and action steps that will be taken to implement the Program Sustainability Plan outline during the course of the Agreement;
- List of energy efficiency, water efficiency and distributed renewable energy generation measures that will be available for funding as part of the Program; the list must include, at a minimum, measures listed in the Energy Commission's RFP #400-09-402<sup>21</sup> and RFP #400-09-403<sup>22</sup>
- A list of Energy Commission-approved prescriptive measures for residential retrofit projects;
- Plans for regional partnerships with workforce development, real estate and other groups;
- Workforce development plans that include details regarding contractor training and property owner incentives
- Detailed plans for obtaining leveraged funds and resources;
- Plan to verify, track and report energy savings
- Data requirements, based on DOE and Energy Commission direction, for tracking reports that Renewable Funding will develop;
- Milestones that can be used to gauge progress towards Program objectives;
- Plan for reconciling CEC requirements with utility program requirements; and
- Risk analysis and contingency plans for critical components of the Program, which include but are not limited to the following:
  - Program participation
  - Retrofit quality
  - Lower than expected energy savings from installed and financed measures
  - Integrated web portal for outreach and data management
  - Interim measures for outreach and data management

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<sup>20</sup>The most recent California Building Energy Efficiency Standards available here: <http://www.energy.ca.gov/title24/> as well as the most recent California Home Energy Rating System Program Regulations available here: <http://www.energy.ca.gov/HERS/index.html>

<sup>21</sup>[http://www.energy.ca.gov/contracts/RFP\\_400-09-402/addendum\\_03/02\\_2009-11-18\\_02\\_MCR-Solicitation.pdf](http://www.energy.ca.gov/contracts/RFP_400-09-402/addendum_03/02_2009-11-18_02_MCR-Solicitation.pdf), Section II, Targeted Retrofit Measures

<sup>22</sup>[http://www.energy.ca.gov/contracts/RFP\\_400-09-403/addendum\\_03/02\\_Final-SEP-Res-RFP-11-9-09.pdf](http://www.energy.ca.gov/contracts/RFP_400-09-403/addendum_03/02_Final-SEP-Res-RFP-11-9-09.pdf), Section II, Table 1

- Validation Actions, if applicable
  - Bond Sale, if applicable
  - A detailed marketing, communications and outreach schedule and plan to manage and coordinate marketing and outreach efforts statewide. This may include:
    - Marketing and Outreach Goals and Objectives
    - Regional Marketing Approach
    - Target Audiences
    - Key Messages
    - Tools and Materials
    - Media Plan
  - Present the Draft Implementation Plan and supporting materials to the CCM via a conference call or a physical meeting. Supporting materials will include but not be limited to: background documents pertaining to risks and contingencies, a work plan, a budget, and a prescriptive measures list.
  - The PACE pilot programs will develop separate implementation plans with detail specific to their programs. The plans will include at a minimum:
- Residential PACE
- A list of the specific activities that will be conducted to deliver the program as described in this SOW.
  - Plan to leverage and partner with the RCPA/RRP.
    - The Residential Retrofit Program (RRP) is a joint effort of County municipalities under the direction of the Regional Climate Protection Authority (RCPA), which is developing a program designed to address the issues of retrofitting homes on a neighborhood basis. This program has American Recovery and Reinvestment Act (ARRA)/Energy Efficiency Conservation Block Grant (EECBG) funding, and has funding under a SEP Comprehensive Residential Building Retrofit Program award to the Association of Bay Area Governments (ABAG). The program is intended to market the concept of retrofitting to the community at scale, establish retrofitting standards and recommend qualified vendors, and to inform potential participants of funding and financing opportunities for their projects, including incentives, rebates, IOU and Federal programs, and SCEIP. The Contractor will work in conjunction with the RRP to avoid duplicative efforts and to create an integrated messaging standard where possible to avoid consumer confusion. By having the messaging associated with SCEIP and with the RRP align as closely as possible, the Program will feature integrated messaging designed to reduce the potential for confusion among consumers in Sonoma County. Where possible, standards for program participation may mirror each other, including recommendations for implementation of project elements, loading order recommendations, audit recommendations and general standards for approaching retrofits, such that customers will receive the same technical approach from the individual programs.
  - Description of the process of procurement of subcontractors under the Contract.

- The County will follow its internal, as well as state and federal procurement policies and rules, as required by this Contract, and select subcontractor partners for the financial advisor/investigation role in the refinancing deliverable. Additional required subcontractors will be selected in the same fashion. The subcontractor in the area of PACE bonding financing strategy is key to the successful completion of the deliverables, as they will actually create the product or strategy for Contractor's consideration and approval, and without them, Contractor will not be able to complete the tasks under the Contract.
- Summary of agreements to work with local redevelopment agencies.
  - Contractor will contact local redevelopment agencies to identify complementary programs that might provide additional funding and/or support to potential SCEIP clients in their area of responsibility, and to serve as conduit to disseminate Program information. Specifically, Contractor will work with the Sonoma County Community Development Commission to integrate commercial and residential rehabilitation loan programs to both ensure that energy efficiency and funding and financing information is provided to interested owners in the Redevelopment areas of the County. This effort will be pursued with each City Redevelopment program as well. One purpose of this effort will be to try and combine available funding streams to allow for deep energy retrofitting in projects which may not have otherwise included these elements, such as projects in the Facade Improvement Loan program.
- Prepare a detailed Financing Plan, a timeline for the Program that delineates the schedule for each program activity, including procurement of subcontractors to implement the contract activities, milestones that can be used to gauge progress towards the program objectives and completion of program deliverables (the first CPR will occur within the first 6 months of the project start date), contingency plans for the critical components of the Program, and deployment schedule for expenditure of funds and tracking procedures.
  - The most challenging portion of the Contract and budget will be the timing and coordination with the Statewide efforts of Energy Upgrade California including and not limited to: implementation of the one-stop financing clearing house, the web portal, delivery of retrofit contractor credential, and quality assurance programs, defined standardization of energy efficiency requirements and methodologies in place, the resolution of PACE financing assessment status and GHG tracking and reporting tool availability. It is uncertain that the statewide portal will have these elements available, or when they might be available assuming the elements are included in the portal. Additional challenges will be present in the investigation and establishment of financing strategies in the absence of a resolution of the federal regulatory challenge. Finally, the challenge of integrating 1700 existing files (and counting) which must be integrated and loaded into the tool used by the Program must also be accomplished.
- Contingency Plan
  - A Contingency Plan lowers the risk for critical program components that are not accomplished. The fundamental risk is that the funding awarded for this

program will not be expended and will have to be returned to the state or federal government for failure to recruit the participants required to enable completion of the activities that are the objective of the program. To mitigate this fundamental risk, a monthly deployment schedule of all activities that contribute to successful completion of these activities will be developed, and the Contractor shall actively monitor progress against this deployment schedule, identify problems with progress and corrective actions that can be taken to address those problems and keep the PM actively informed, so that Critical Program Review meetings can be called as necessary.

- Develop Risk Assessment and Contingency Plans, including but not limited to:
- Pooled Bonding Strategy
- Web-based Data Management Tool
- Marketing, Education and Outreach
- Retrofit Quality
- Audit implementation

#### Commercial PACE

- Program Timeline
- Schedule of milestones
- Schedule of deliverables
- Clear and distinct names for each deliverable under this Agreement
- Program Design
- Risk Assessment and Contingency Plans
- Program participation
- Retrofit quality
- Lender participation
- OCC guidance
- Validation actions, if any
- Program Administration
- Program Delivery
- Implementation Plan
- Participation in Los Angeles County's Energy Program
- Meetings with key stakeholder groups
- Development of Program eligibility criteria and legal agreements
- Development of marketing materials
- Creation of a website for submission of applications
- Creation and management of a loan loss reserve fund for retrofit financing
- Funding of Phase I and Phase II energy audits
- Quality assurance procedures
- Verification of energy savings
- Collaboration with Los Angeles Department of Water and Power (LADWP) to take maximum benefit of available incentives and technical assistance to building owners through rebates, RCx, and Energy Load Monitoring Programs (ELMP)
- Processing of tax lien applications
- Creation of a tax lien

- Plan for pilot program replication – preparation of guidance package, outreach to local governments statewide to encourage replication, technical support to local governments replicating the pilot, starting with Placer County and San Francisco Pilot program replication document package

**Contractor Deliverables:**

- Draft Implementation Plans (3)
- Supporting materials

**B. Final Implementation Plan**

The goal of this activity is to prepare and submit a detailed Final Implementation Plan that satisfactorily addresses the CCM's feedback provided on the Draft Implementation Plan. In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

- Work with subcontractors and representatives from pilot programs to prepare the Final Implementation Plan.
- Submit the Final Implementation Plan and supporting materials to the CCM within ten (10) days after receiving comments from the CCM. Supporting materials will include but not be limited to: background documents pertaining to risks and contingencies, a work plan, a budget, and a prescriptive measures list.
- Participate in a conference call or physical meeting regarding the Final Implementation Plan, if required.

**Contractor Deliverables:**

- Final Implementation Plan (3)
- Supporting materials

**C. Research, Develop and Implement Program Sustainability Plan**

The goal of this activity is to develop a comprehensive Program Sustainability Plan based on the outline in the Implementation Plan that describes next steps required for the continuation of the Program and lays out a strategy designed to ensure the continued operation and long-term viability of the Program, which will be included in the final Program report. In its subcontract with Ecology Action, Contractor may task subcontractors with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

Task Ecology Action with the following:

- Prepare a draft assessment of key elements of a Program Sustainability Plan (e.g. necessary economic, demographic, technical, or regulatory framework information)

- Consult with subcontractors, available advisory committee members, and representatives from pilot programs to create a draft outline for the Program Sustainability Plan as part of the draft Program Implementation Plan
- Work with subcontractors, advisory committee members, and representatives from the pilot program to research and develop a draft comprehensive Program Sustainability Plan that:
  - Describes the challenges and barriers to the long term viability of the Program;
  - Recommends a network of functional solutions to these challenges;
  - Outlines the methods by which the Program can continue to provide a high level of service to California property owners and contractors and to support the goals of job creation, and the attainment of the State's climate change goals
  - Describes ways in which Program activities will drive lasting changes in the market; and
  - Identifies knowledgeable personnel, materials, funding sources and other resources to support and facilitate continued Program success.
- Take action throughout the course of the Agreement to implement the Program Sustainability Plan to assist in facilitating the Program continuity beyond the end of the ARRA time period.

In collaboration with the Program Team,

- Report on progress toward the Program Sustainability Plan
- Prepare final Long-Term Program Sustainability Plan

Task Renewable Funding with the following:

- Provide draft analysis and options for sustainability of integrated web portal maintenance based on direction and oversight from the Energy Commission and LGC.

#### **Deliverables:**

- Long-Term Program Sustainability Plan
- Supporting materials
- Progress reports on Program Sustainability Plan implementation

#### **D. Pilot Program Replication**

The goal of this activity is to use program resources and lessons learned through the establishment of the PACE Programs to expand the Program models to other regions in California. This will be accomplished by developing a guidance package, including example program marketing/outreach materials, contracts, applications, RFQ/Ps, resolution language, and documentation of best practices and lessons learned, conducting outreach to local governments around the state to encourage replication of the pilot program's owner-arranged PACE financing of retro-commissioning and capital improvements, and providing technical support to local governments in replicating the pilot program.



## Residential PACE

### **The Contractor shall:**

- Conduct outreach to local governments around the state interested in implementing residential PACE to encourage replication of the pilot program;
- Provide technical support for local governments replicating the pilot program.
- Hold regular meetings/calls/webinar with appropriate contacts for interested local governments' residential PACE programs;
- Advise interested local governments on the mechanics of establishing a residential PACE program; and
- Make publicly available a guidance package of all program documents including:
  - Program marketing/outreach materials,
  - Application criteria, forms and materials
  - Final feasibility study of pooled bond financing options
  - RFQ/Ps
  - Contracts
  - Resolution language
  - Case studies, Best Practices, and Lessons Learned

### **Deliverables:**

- Meeting summaries prepared by local governments with whom Contractor works
- PACE Replication Model Start-Up Kit, including program marketing/outreach materials, contracts, applications, RFQ/Ps, financing feasibility study and resolution language

## Commercial PACE

The Contractor, Sustento Group and CCI will work with Placer County and San Francisco as the first local governments to model its commercial PACE program after the pilot.

### **The Contractor shall:**

- Hold regular meetings/calls/webinar with appropriate contacts for Placer County's commercial PACE program;
- Coordinate with CCI to advise Placer County on the mechanics of establishing a commercial PACE program;
- Hold regular meetings/calls/webinar with appropriate contacts for San Francisco's commercial PACE program;
- Coordinate with CCI to advise San Francisco on the mechanics of establishing a commercial PACE program;
- Make publicly available a guidance package of all program documents including:
  - Program marketing/outreach materials,
  - Application criteria, forms and materials

- RFQ/Ps
- Contracts
- Resolution language
- Case studies, Best Practices, and Lessons Learned
- LAPM will conduct outreach to local governments around the state to encourage replication of the pilot program for nine months following expiration of the grant term, through December 31, 2012; and
- LAPM will provide technical support for local governments replicating the pilot program.

**Deliverables:**

- Meeting summaries prepared by local governments with whom Residential PACE Subcontractor works
- PACE Replication Model Start-Up Kit, including program marketing/outreach materials, contracts, applications, RFQ/Ps, financing feasibility study and resolution language
- Meeting summaries prepared by Placer County, San Francisco and any other local governments with whom Commercial PACE Subcontractor works
- Case studies, including Best Practices and Lessons Learned, prepared by LAPM and CCI in collaboration with the subject local government replicating this commercial PACE pilot and their Program Administrator
- Program guidance documents, including program marketing/outreach materials, contracts, applications, RFQ/Ps, and resolution language

**Task 2.2 Integrated Statewide Web Portal**

The goal of this subtask is to design, implement, customize, and maintain an integrated statewide web portal that will reduce consumer confusion and integrate the ARRA SEP and EECBG financing programs for municipalities, the utilities' rebate and incentive programs and the ARRA and other energy retrofit incentive programs and tax credits.

Any budget that is not expended to meet the deliverables listed below may be reallocated by mutual consent to activities and costs associated with the sustainability and transition of the web portal at the end of the contract term, additional outreach and support, and/or a statewide finance subsidy fund as outlined above in the 2.0 contingency plan.

**A. Design and Implement Integrated Statewide Web Portal**

Under the direction of and with oversight from the Energy Commission and LGC, Renewable Funding will undertake the design, development and implementation of the integrated web portal and coordinate with the investor-owned utility and CPUC State-wide marketing, education and outreach program and website known as Engage 360. In its subcontracts with Renewable Funding and MIG, Contractor may task those subcontractors with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:****Task Renewable Funding with the following:**

- Implement integrated web portal design and content, as directed
  - Collaborate on draft site architecture designed by MIG
  - Implement final site architecture designed by MIG and,
  - Incorporate local or default content for all fifty-eight California counties, as provided by MIG, Ecology Action and local government stakeholders..
- Implement integrated web portal functionality
  - Ensure integrated web portal identifies all relevant sources of rebates, incentives, credits and financing available for any California residential building owner's region, building type and project type in collaboration and coordination with the investor owned utility State-wide marketing, education and outreach program and website known as Engage 360;
  - Per direction of the Energy Commission and LGC develop and implement terms of use for consumers using the integrated web portal;
  - Per direction of the Energy Commission and Program Team develop data safeguard protocols to protect the data of consumers using the integrated web portal from improper use;
  - Implement roll-out of integrated web portal in increasing functionality phases. A plan with the details and timing of each phase will be included with the Implementation Plan. There will be approximately three phases rolling out additional functionality in each phase. Timing of integrated web portal phases will be contingent on cooperation of utilities; and
  - Create a supporting back-end reporting system, application database and customized software for processing incentive and financing requests, where appropriate, and for reporting. This is distinct from the front-end, customer-facing interim web portal designed and operated by the Energy Commission. The application database and reporting system will be used to develop the tracking reports that Renewable Funding will provide under direction of and oversight from the Energy Commission and LGC. This database will be based in part on information provided by CalCERTS and the EUC Registry.
- Provide a walk-through of the application processing and reporting database and software to the CCM.

**Task MIG with the following:**

- Design integrated web portal consumer-facing front-end
  - Collaborate with Renewable Funding on draft site architecture;
  - Develop final site architecture to be implemented by Renewable Funding
  - Incorporate statewide branding consistent with *Energy Upgrade California*.
- Develop integrated web portal content
  - Develop default, and as needed, customized content for integrated web portal pages and create protocols for local content uploaded by county staff; and

- Provide downloadable translated content on integrated web portal in several languages, including but not limited to Spanish and Chinese.

**Deliverables:**

- Draft *Energy Upgrade California* integrated web portal design
- Final *Energy Upgrade California* integrated web portal design
- Draft Terms of Use
- Final Terms of Use
- Draft data safeguard protocols
- Final data safeguard protocols
- Draft integrated web portal content for information and county pages
- Final integrated web portal content for information and county pages
- Draft integrated web portal functionality and database structure
- Final integrated web portal functionality and database structure
- Draft content protocols for county uploads
- Final content protocols for county uploads

**B. Customize Integrated Statewide Web Portal**

The goal of this activity is to customize components of the integrated web portal for specific pilot regions with PACE financing. In its subcontract with Renewable Funding, MIG, and Ecology Action, Contractor may task the subcontractors with carrying out the day-to-day activities associated with this effort. Contractor is responsible for all deliverables.

**The Contractor shall:**

Task Renewable Funding with the following:

- Customize the integrated web portal for non-PACE regional residential programs per the direction of the Energy Commission in coordination with Program Team Members and local government stakeholders;
- Customize the integrated web portal for regional residential and commercial PACE pilot programs per the direction of the Energy Commission in coordination with Program Team Members and other local government stakeholders;
- Work with MIG on content for customized section, as necessary;
- Integrate multi-family project development tool per the direction of the Energy Commission in coordination with Program Team Members and other local government stakeholders; and
- Walk CCM and Pilot Program Leads through customized design.

Task MIG with the following:

- Ensure pilot program brand, content and design are consistent with *Energy Upgrade California* by providing review of text, edits, design concepts and overall materials, and

- Provide ongoing evaluation and enhancements to website, in cooperation with partners and upon approval of CCM, to content to ensure site usability, support program goals and meet partner needs

Task Ecology Action with the following:

- Serve as contract administrator for the subcontract with Stopwaste.org to implement the Multifamily Navigational Tool
- Serve as contract administrator to PSD for the Project Tracking Tool

**Deliverables:**

- Draft *Energy Upgrade California* integrated web portal customized design and content
- Final *Energy Upgrade California* integrated web portal customized design and content
- Draft integration plan for multi-family project development tool
- Final integration plan for multi-family project development tool

**C. Maintain Integrated Statewide Web Portal**

The goal of this activity is to maintain an integrated statewide web portal. In its subcontract with Renewable Funding, Contractor may task Renewable Funding with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

**The Contractor shall:**

Task Renewable Funding with the following:

- Launches and maintains an integrated statewide web portal during the contract term to ensure regular software platform updates, quality assurance, and website-up-time;
- Works with Energy Commission the Program Team and local government stakeholders to update and maintain integrated web portal with process improvements as necessary, based on initial and on-going implementation feedback;
- Works with Energy Commission, the Program Team, and local government stakeholders to implement content protocols to ensure consistency of messages and materials; and
- Works with Energy Commission, the Program Team, and local government stakeholders to provide a customer service plan supported through an on-line directory and facilitated by Community Coordinators.

Task MIG with the following:

- Support RF and partners with ongoing website maintenance as it relates to content development, design and usability.

**Deliverables:**

- Beta website for testing before public launch
- Integrated public website

- Summary of monthly website statistics, to be submitted as part of Monthly Progress Reports which will also include a summary of integrated web portal improvements and enhancements
- Management plan for content protocol

### **Task 2.3 Workforce, Property Owner & Stakeholder Outreach & Engagement**

The goals of this subtask are to promote the outreach, education, marketing, stakeholder engagement, and workforce development activities of this project. Activities under this subtask, and described more fully below, are intended to support the ‘boots on the ground’ infrastructure necessary to motivate the market towards rapid uptake of energy upgrades. This will be achieved through providing consistent statewide messaging and branding, regionally appropriate community based outreach and education, and incentives available to motivate property owners. This subtask also funds the important workforce development activities needed to ensure a trained workforce is available statewide and to motivate the market to select these trained workers.

In its subcontract with Ecology Action and MIG, Contractor may task Ecology Action and MIG with carrying out the day-to-day activities associated with this Subtask 2.3. Contractor shall remain responsible for all deliverables.

#### **A. Align with Workforce Development and Other Complementary Programs**

The goals of this activity are to: (1) link “Program Plus” Program participants to regional energy efficiency and complementary programs (including workforce development); (2) link “Program Plus” Program participants to energy efficiency and other industry representatives; (3) generate a list of new and existing complementary programs in all California counties that may or may not be available statewide, including incentives that are available only to residents of Program Plus counties and are funded through this Agreement; (4) assist property owners in all California counties in accessing these resources as appropriate; and (5) connect property owners in all Program Plus counties to complementary workforce development training through the Subsidized Contractor Training Program. Property Owner Incentives available only to residents of Program Plus counties and which may be expanded to include all Californians are: HERS II pre-installation rating and HERS II post-installation verification incentives.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

Funds not expended under this task may be reallocated by mutual consent as outlined above in the 2.0 task contingency plan.

**The Contractor shall:**

Ensure that Ecology Action does the following:

On Incentives:

- Develop and implement an incentive program that will include:
  - Protocols, policies, and frameworks to maximize project reach, increase uptake of test-in test-out rating protocols and increase program uptake and access by economically disadvantaged communities.
- Administer allocation of incentives based upon the detailed Implementation Plan

On Workforce Development:

- Coordinate with existing industry green teams or other appropriate energy efficiency, workforce development, renewable energy, water conservation, green plumbing, and green business certification industry groups to expand the utilization of the Program.
- Collaborate with regional Workforce Investment Boards (WIBs), the California Workforce Association, community colleges, Clean Energy Workforce Training Program (CEWTP) grantees and/or other pertinent green jobs training programs
- Design and implement the Subsidized Contractor Training Program.
- Provide HERS II pre-installation energy rating and post-installation verification incentives to property owners in accordance with the design specified in the Program Implementation Plan.
- Generate a list of existing complementary programs specific to each region (such as those offered by the investor-owned utilities, publicly-owned utilities and the California Solar Initiative), for use with the property owner application integrated web portal.
- Participate in Regional Workforce and Economic Development committees that result from Energy Commission summit meetings.
- Coordinate with MIG to guide workforce messaging and content based on field experience and stakeholder engagement
- Utilize appropriate messaging and content for workforce outreach and materials developed by MIG.

**Ecology Action Deliverables include:**

- Workforce incentive program plan
- List of regional-specific new and existing complementary programs for use with the property owner application integrated web portal

## **B. HERS II and Building Performance Contractors Integration**

The goal of this effort is to establish HERS II ratings as a prominent element of the whole house retrofit concept. Integrating HERS II into the program, website and education and outreach materials will achieve a high level of homeowner participation, educate Whole House Home Energy Raters about the *Energy Upgrade California* Program, prepare Participating Contractors to work with HERS II raters, and/or to become BPC raters, support Program incentive uptake, and offer training to program partners on the details of home energy ratings.

MIG will support Ecology Action (EA), Renewable Funding (RF) and the Energy Commission to promote the new HERS II Rater (HERS II) and the Building Performance Contractor Path (BPC) Incentives and program. In addition MIG will support the efforts of EA to inform HERS II and BPC raters (Home Energy Raters) about the Energy Upgrade California Program, how their businesses can benefit from the program, how to participate and how to sell their services.

MIG will support the efforts of team partners by developing messaging in collaboration with the Program Team and the Energy Commission to build support, create consistency, and communicate the value of Whole-House Home Energy Ratings. MIG will offer training to program partners and on how to speak effectively and consistently about independent energy ratings, and develop collateral, training materials, and other materials to streamline integration and effectiveness of the program.

**MIG activities include:**

HERS II Integration and Promotion Plan

- Develop an education and awareness plan for the integration of HERS II  
Proposal to Update necessary Program messaging, branding, marketing materials, and other program elements as identified by MIG and agreed to by CCM.

Web Portal Content Deliverables

- Design and develop content for a dedicated HERS II page on the web portal, Integrate Home Energy Rater information.
- Revise existing content on statewide and County-level pages to incorporate HERS II

Whole House Home Energy Raters

- MIG will develop materials with original content that address the HERS II program and how to become a rater.
- Curriculum development for an orientation program to integrate HERS II raters in the *Energy Upgrade California* program.

The CCM may work with MIG to expand the HERS II integration plan to include messaging and marketing plans and related material refresh for specific sectors, including but not limited to Contractors, Homeowners, and Local Government Partners. These additional deliverables will be further delineated in specific work plans and agreed upon in writing by the CCM and MIG.

**Deliverables**

- HERS II Integration Plan
- Updated messaging and marketing collateral as appropriate
- Web portal content to support HERS II Integration and Incentive Program Roll Out
- Curriculum Development for HERS II Orientation



- Additional Deliverables as Agreed to in Writing by CCM and MIG

### **C. Outreach, Marketing and Customer Support**

The goal of this activity is to provide outreach, marketing and customer support to property owners, contractors and additional stakeholders to develop the retrofit market and promote the installation and financing of energy and water upgrades.

The Contractor will engage MIG to create a clear and consistent Program promotion design, together with template materials that distinctively identify and promote the Program to target audiences. The goal is to:

- Create local templates and produce versions of the standardized marketing toolkit;
- Coordinate with the marketing efforts of investor owned utilities programs, including the investor owned utility State-wide marketing, education and outreach program and website known as Engage 360;
- Produce ancillary educational and promotional materials and activities such as Program brochures, advertisements, workshops, and/or incentive awards to drive participant recruitment, and encourage increased comprehensive whole-house retrofit adoption/installation among target populations; and
- Develop online and mobile social marketing tools to promote the program in conjunction with overall website functionality and phasing.

In addition, the Contractor will engage Ecology Action to work with MIG to develop additional strategies and approaches to engage the targeted populations in energy efficiency programs. This list will be further defined in the implementation plan and be consistent with the target audiences of *Energy Upgrade California* and the utilities' whole house improvement programs. By aligning the targeted audiences of various programs, the Program Team can better leverage funds and efforts being made throughout the state.

Contractor will enlist Ecology Action to engage a broad network to promote the Program and disseminate Program information through existing outreach mechanisms, community event tabling, workshops, presentations, or other appropriate activities. Ecology Action will ensure that this work does not represent a duplication of the promotion and marketing efforts being conducted under the investor-owned utilities' whole house energy efficiency improvement program. Ecology Action will also work with subcontractors to increase uptake of energy efficiency and comprehensive whole building retrofit installations, and expand overall Program reach among targeted or disadvantaged populations. This will be accomplished by maintaining up-to-date information on the *Energy Upgrade California* integrated web portal regarding local incentives, sustainability awards, and/or rebates for which program participants are eligible.

Depending on the volume of customer service requests, the Program Team may need to develop and implement a call center feasibility plan and create a single call center.

This item is not in the current budget and would require a budget amendment if deemed necessary.

In its subcontracts with Ecology Action and MIG, Contractor may task those subcontractors with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

Funds not expended under this task may be reallocated by mutual consent as outlined above in the 2.0 task contingency plan.

**The Contractor shall:**

- Task Ecology Action with the following:
  - Program Implementation
    - Work with MIG and the Program Team regarding development of promotional materials, plans, and procedures;
    - Manage the Regional Delivery Team to:
      1. Offer on-the-ground property owner assistance in “Program Plus” counties, in addition to statewide financial and website technical assistance to facilitate rapid adoption of the Program throughout the target region; and
      2. Track customer service contacts, troubleshooting, and support through the number of materials distributed, calls logged, and/or events attended.
    - Work with MIG to guide development of customer support tools such as FAQ sheets, case studies, flowcharts, resource lists, and website links, based on input from the field.
  - Information Coordination
    - Facilitate the work of the Program Team and Regional Delivery Team to identify and catalog existing incentive programs for use in integrated statewide web portal.
  - Training
    - Create curriculum content in collaboration with other key subcontractors and stakeholders for training seminars;
    - Where appropriate, hold network trainings, disseminate promotional materials, and track stakeholder engagement metrics from such promotional activities; and
    - Conduct training seminars for homeowners, businesses, and installation contractors and HERS II raters/auditors.
  - Networking
    - Collaborate with local real estate industry and multiple listing services where appropriate to make rating and retrofit information available to the market;
    - Collaborate with Program Team to establish a network of resources, industry groups, and workforce development agencies to assess opportunities for joint promotion and recruitment of property owners, contractors, and potential green workforce participants;

- Collaborate with Program Team to identify and hold promotional outreach events such as trade shows and community workshops; and
  - Coordinate with Program Team to deliver Program reach among economically disadvantaged populations or other targeted groups.
- Program Performance
  - Carefully track all produced and disseminated materials, event contacts, and website traffic, as indicators of Program reach;
  - Track promotional reach metrics as established through stakeholder engagement activities, data on all produced and disseminated materials, and event contacts;
  - Monitor use and effectiveness of Program incentives in moving participants from Tier two to Tier three measures of the Energy Commission's Comprehensive Residential Building Retrofit Program;
  - Draft a summary of Program incentive measures and the effectiveness of such measures;
  - Draft summaries of customer service contacts, call logs, and similar data (to be included in the Monthly Progress Report, as appropriate); and
  - Develop customer satisfaction feedback mechanism to be detailed in the implementation plan.
- Task MIG with the following:
  - Create promotional tools such as fact sheets, brochures, and educational hand-outs;
  - Develop and coordinate the marketing, communication and education strategies and materials;
  - Ensure that marketing, promotional, and informational materials contain the *Energy Upgrade California* Identity Mark and Logo, as specified;
  - Design education, outreach, and promotional materials that can be customized by each county as facilitated by the Community Coordinators;
  - Draft a summary of the content of proposed Program marketing print/radio/TV advertisements and public service announcements;
  - Produce Program marketing print/radio/TV advertisements and/or public service announcements and coordinate and purchase media distribution for these materials, as feasible within allocated budget;
  - Develop a standardized marketing toolkit that contains branding guidelines, standard PowerPoint deck, template brochure, a boilerplate Program description for inclusion in local materials, a basic Program logo, and a generic press release. These documents will be customized and incorporated into local Program materials;
  - Create materials designs, sustainability site signage, and/or participant awards for dissemination through the network;
  - Work with Ecology Action to obtain input from field activities and advisory committees regarding development of promotional materials, plans, and procedures;
  - Work with Ecology Action field teams and advisory committees to identify

- most effective channels for promotional materials or outlets targeted to each region, such as brochures, door hangers, bill inserts, and television/radio;
- Provide promotional designs, plans, and procedures to the Agreement Administrator for submission to the CCM;
- Coordinate with the marketing efforts of investor-owned utilities' programs, including the investor-owned utility and CPUC State-wide marketing, education and outreach program and website known as Engage 360; and
- Coordinate with Ecology Action to build on existing coordination and efforts in partnerships with local governments, building and trade organization, other industry groups to maximize consumer understanding of contractor best practices, listing, job training and other related retrofit information.

### **Additional Tasks:**

#### **Multi-Family Program Integration**

MIG will work with LGC team partners and relevant multifamily stakeholders to develop an approach and plan for the integration of a Multi-family Residential Program element into the Energy Upgrade California Program. This effort will involve developing an outreach and education plan very narrowly focused on supporting existing ARRA efforts, support materials and collateral for existing county SEP funded multi-family programs.

Tasks will include the following:

- Program research and analysis to identify appropriate messaging strategies and leverage the work of existing programs
- Work session with LGC team and appropriate multifamily stakeholders  
Development of Outreach and Education Plan focused on supporting existing ARRA programs
- Web strategy and content development
- Outreach and education collateral and tools (i.e. brochures, talking points, FAQ, presentations, photo shoot,
- Webinars for interested and participating program partners

#### **Public Relations Support**

For ongoing Public Relations/earned media effort lead by EA, MIG will provide collaboration on the development of media press releases and other opportunities to develop earned media. EA will lead earned media efforts, and provide regular updates on earned media secured throughout the term.

### **D. Regional Coordination and Development**

Ecology Action will work collaboratively with the Program Team and Regional Delivery Team to provide each Program Plus county with resources necessary to achieve Program goals, and to engage in region-wide (or county-wide, where appropriate) cooperative project design, implementation, marketing, and coordination that will maximize economies of scale and take advantage of overlapping markets. Ecology Action will provide Program-wide support, technical assistance, and coordination to all regional LGACs, subcontractors, and individual jurisdictions as appropriate to maintain

communication, consistency, and quality assurance while ensuring that all project deliverables are met on time and within budget.

Ecology Action will work with Program Team, Regional Delivery Team, complementary programs, and agency staff to organize and facilitate opportunities for collective training of key personnel and staff (e.g., building permit department, customer service, sales, and outreach staff). Training may include in-person training, webinar conferencing, fact sheet development, and/or informational training manuals.

In its subcontract with Ecology Action, Contractor may task those subcontractors with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

Funds not expended under this task may be reallocated by mutual consent as outlined above in the 2.0 task contingency plan.

**The Contractor shall:**

- Task Ecology Action with the following:
  - Provide Regional Staff (Community Coordinators) who shall fulfill the following roles in “Program Plus” counties:
    - Regional liaison to local government staff, property owners, installation contractors and other stakeholders;
    - Provide Program team outreach, marketing and promotion to property owners;
    - Provide Program Team with up-to-date information regarding local energy or water incentives and rebates;
    - Assist in TAC and LCAG meeting administration;
    - Compile and report on program performance metrics as detailed in the Implementation Plan;
    - Provide front line customer service; and
    - Conduct training and education of local government staff, contractors and property owners etc.

**Additional “Program Plus” Services**

Services will include locally appropriate outreach and education delivered through regional coordination and development in “Program Plus” counties. The efforts may be expanded to all counties statewide upon written agreement between the CCM and EA and dependent upon the availability of funding.

**Deliverables:**

- Draft Incentive Program Design Plan
- Final Incentive Program Design Plan
- Incentive Program Design templates
- Draft marketing toolkit
- Final marketing toolkit

- Draft Program logos and other promotional tools
- Final Program logos and other promotional tools
- Draft Protocols for using logos and other promotional tools
- Final Protocols for using logos and other promotional tools
- Education, outreach, and promotional materials for each region
- Curriculum designs for training seminars
- Summary of content of proposed Program marketing print/radio/TV advertisements and/or public service announcements
- Stakeholder engagement metrics as indicator of promotional reach
- Materials designs, sustainability site signage, and participant awards
- Summary of Program incentive measures and the effectiveness of such measures
- Draft promotional designs, plans, and procedures
- Final promotional designs, plans, and procedures
- Summaries of customer service contacts, call logs, and similar data (to be included in the Monthly Progress Report, as appropriate)
- Customer service support tools
- Report summarizing customer satisfaction feedback obtained from property owners
- Earned media updates (to be included in monthly reports)
- Multifamily Outreach and Education Plan Web Content
- Multifamily Supplement to Outreach and Education Toolkit
- Webinar Presentation
- Multifamily Specific Marketing Collateral
- Multifamily Building Photos
- Regional Coordination Reports (summaries of meetings, training, outreach events etc.)
- Quarterly Summary of Training Activities

#### **Subtask 2.4 Tracking and Reporting and Quality Assurance**

The goals of this subtask are to support Quality Assurance efforts in the *Energy Upgrade California* program to balance the needs for rigor and streamlined and efficient uptake of home energy retrofits. This task will additionally support the stringent reporting requirements associated with SEP funding.

#### **A. Quality Assurance, Energy Audits and Energy Savings Verification**

In accordance with the Energy Commission's *State Energy Program Guidelines*, each proposed project site must achieve a reduction in total building energy use through energy efficiency before on-site renewable projects are eligible for financing. The Program will use a phased approach to increase the uptake of the Third Tier Comprehensive Whole House Program approaches once HERS II is available. These measures will create jobs, spur Green Jobs training programs for HERS II auditors to serve the market, allow loading order analysis of properties in applications, and show cost effective measures for the customers to take advantage of.

All projects funded by Energy Upgrade California are required to have permits from the local jurisdiction. Project permits and valid contractor licenses will be verified by each

city's Building Department, and by the county for work in unincorporated areas to ensure contractors are working within their license authority. Validity of the license of all contractors for the specific project is established during application evaluation, and applications are rejected if the license is not valid for the project.

In its subcontract with Ecology Action, Contractor may task Ecology Action with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

Funds not expended under this task may be reallocated by mutual consent as outlined above in the 2.0 task contingency plan.

### **The Contractor shall:**

Task Ecology Action with the following:

- Evaluate, track, and monitor ongoing quantitative and qualitative Program outcomes, including the number of properties served, estimated jobs created, and total kilowatt hours (kWh) mitigated, dependent upon data sharing agreements with the Investor Owner Utilities being secured by the Energy Commission.
- Ensure the quality assurance of projects that are in a region or of a type not covered by existing programs, consistent with Energy Commission quality assurance requirements.
- Ensure that existing audit approaches approved by the Energy Commission are conducted for participating commercial buildings, if applicable.
- Collaborate with existing efforts throughout California to extend HERS II energy audit, verification and rating procedures to multi-family residential buildings.
- Provide oversight of CalCERTS progress toward the completion of the Energy Upgrade California registry.
- Ensure that the energy audits, ratings, and investigative phase of building commissioning are performed in accordance with the Energy Commission's *State Energy Program Guidelines*. In the event the Agreement term begins before certified HERS II Raters are available in the Contractor's performance region, the Contractor will use either the Energy Commission prescriptive list or an Energy Commission interim performance approach (described below) for residential buildings to meet the 10% energy efficiency improvement requirement at each proposed site.
- **Prescriptive List.** To comply with the 10% energy efficiency improvement requirement, residential buildings will be required to either comply fully with and qualify for the IOU's basic prescriptive package rebate or install all of the following measures, consistent with Energy Commission technical specifications for each measure (such as Annual Fuel Utilization Efficiency rating of furnace, R-value of insulation, and specification for when measures are feasible):
  1. Air sealing
  2. Attic insulation

3. Duct test and seal or replacement
  4. Insulation of domestic hot water heater or replacement
  5. Combustion safety (requires BPI Building Analyst) and
  6. CO alarm
- **Interim Performance Approach.** For residential buildings where it is not feasible to install all of the measures in the Energy Commission prescriptive list (including when some of the measures have been previously installed or when measures are otherwise not feasible as indicated in the technical specifications) or full compliance with the IOU's basic prescriptive rebate package, the prescriptive approach cannot be used. In these cases, an Energy Commission interim performance approach for the building must be used to determine compliance with the 10% energy improvement requirement prior to financing renewable energy projects for the building. Further detail will be provided in the implementation plan.

The Energy Commission may consider alternate approaches to achieve its loading order policy for residential renewable energy project sites. If the Energy Commission approves an alternate approach, the CCM will provide written approval of the approach to the Contractor.

- **Alternate Approach:** If 10% energy use reductions cannot be readily achieved, perform both 1 AND 2 or 3 below:
  1. HERS II California Energy Audit and install all of the applicable and feasible measures on the Prescriptive List above
  2. Install other measures found by the HERS II energy audit to be more cost effective than on-site renewable generation up to 10% savings
  3. HERS II California Whole-House Home Energy Rating with proof of rating of 85 or lower.

From July 1, 2011 through the end of this Agreement, energy audits must comply with HERS II standards and software. This date may be extended upon Energy Commission approval, to adjust for delays in HERS II availability if necessary.

For proposed nonresidential building sites, the CCM will consider in consultation with the Contractor an energy audit methodology the Contractor will use to meet the 10 percent energy improvement requirement before financing renewable energy projects. The CCM will provide written approval of the methodology.

- Verify that required building permits are pulled for financed projects
- Verify that Title 24 requirements are met for financed projects
- Monitor, record, and report Program progress relative to overall goals and objectives throughout the term of this Agreement.
- Meet or exceed California energy industry standards and Energy Commission requirements for data collection, measurement, calculation, and verification of impacts from both efficiency and renewable energy upgrades.



- Draft an Installation Data Report that includes installation data from projects installed in each area, reflecting the minimum 10% reduction in energy use as a condition of financing renewable installation, and completion of the appropriate audits, rating, and investigative phase of building commissioning in accordance with the *State Energy Program Guidelines*.

**Deliverables:**

- Display of contractor license numbers on web portal as obtained through coordination with the California State Licensing Board (CSLB)
- Installation Data Report, submitted as part of Monthly Progress Report

**B. Tracking and Reporting**

Contractor will engage Ecology Action to develop and oversee reporting mechanisms and collect information required for Program reports, including ARRA reports. Reporting mechanisms will include spreadsheets and databases that allow the Program Team to easily track and submit required data and leveraged resources for compilation of monthly progress reports, CPR(s), and other reports.

This activity will involve use of the application data collection systems designed through this agreement, and development of data collection systems for administrative data from Program Team. These systems will be phased in with necessary components expected to be in place by commencement of full-scale operations (i.e., commencement of public Program participation). A strategy for reporting prior to that time will be included in the Implementation Plan. Ecology Action, with support from Renewable Funding will refine and expand the strategy throughout the Agreement term as needed to reflect changes in activities or feedback from the CCM.

As part of the integrated web portal development, and under direction and oversight from the Energy Commission and LGC, Renewable Funding will develop an application database and reporting system to indicate the number of properties participating in program services along with other appropriate metrics. Data for the database will be provided by CalCERTS through the EUC registry.

In its subcontracts with Ecology Action and Renewable Funding, Contractor may task those subcontractors with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

Funds not expended under this task may be reallocated by mutual consent as outlined above in the 2.0 task contingency plan.

**The Contractor shall:**

- Task Ecology Action with the following:
  - Develop an Administrative data collection system, including databases, spreadsheet templates, and other reporting tools for use by the Program Team;
  - Collect report information from all LGC subcontractors on a timely basis;
  - Revise reporting strategy as necessary, and submit the revised strategy to the CCM;
  - Draft a Data Collection System Report that includes data collection system design specifications and a list of reporting functionality;
  - Provide a walk-through of the data collection system to the CCM; and
  - Draft Data Collection Reports summarizing and explaining data collected for the Program.
  
- Task Renewable Funding with the following:
  - Gather data and report on energy savings associated with projects on properties participating in program services. The data will be included in the database developed by Renewable Funding and in collaboration with CalCERTS on the EUC Registry;
  - Provide tracking reports based on necessary ARRA data fields:
    - The number of participating properties per county and Program-wide, broken into the following categories:
      - Program services accessed
      - Additional categories that may be added as requested by the counties and the Energy Commission
    - Energy savings associated with projects on properties participating in program services; and
    - Provide data collected from the integrated web portal on the impact and success of marketing efforts to appropriate sub contractors.

**Deliverables:**

- Reports on the number of participating properties per county and Program-wide (to be included in the Monthly Progress Report)
- Reports on the energy savings associated with projects on properties participating in program services (to be included in the Monthly Progress Report, once data is available)
- Report on the impact and success of marketing efforts per county and Program-wide
- Data Collection Reports as provided by the Steering Committee

**C. Additional “Program Plus” Services**

The goals of this activity are to provide additional quality assurance and verification of energy savings services to “Program Plus” counties within the state. These services may be expanded statewide upon agreement between the CCM and EA and dependent upon the availability of funding.

## **Task 2.5 Innovative Financing Pilots**

The purpose of this task is to support innovative financing pilot programs across the state. Three specific concepts are being funded, including a statewide subsidy fund available to support existing local government financing programs, a Residential PACE Pilot program in Sonoma County, and three commercial PACE financing programs, located in the City of Los Angeles, the City and County of San Francisco, and Placer County. Further detail about all three program areas is offered below.

### **A. Statewide Finance Subsidy Program**

The goal of this activity is to design a statewide credit subsidy fund, which could be accessed via application by local governments implementing finance programs.

Local Government Commission will administer these funds, which will be set-aside in third party trustee account for the purposes of a loan loss reserve fund or other credit enhancement mechanism prior to or within a month of the contract being finalized. The Energy Commission will establish the specific eligibility criteria for use of this fund in collaboration with the Local Government Commission. The guidelines will ensure that projects financed by subsidized programs are those that meet the energy efficiency standards and QA / QC requirements of the Energy Upgrade California program. The Local Government Commission will administer and/or select an appropriate fiscal agent/trustee(s) to administer the process of recruiting participants and accepting applications for this fund. Each application would be reviewed and if successful awarded a specific allocation from the fund for the specific use of the local government program. Minimum and maximum allowable allocations will be established for each program to be specified in the program guidelines. Additionally, the program would allow for flexibility in the design of the fund to give local government programs the opportunity to react to initial market response for their programs, and request a financial subsidy with the greatest potential for success.

Contractor may task those selected subcontractor(s) and/or vendor(s) with carrying out the day-to-day activities associated with this activity. Contractor shall remain responsible for all deliverables.

#### **The Energy Commission shall:**

- Establish criteria for eligible applicants to the subsidy fund
- Disburse funds to the Local Government Commission to place with Fiscal Agent/Trustee
- Provide ongoing support in the form of the following:
  - Review and provide guidance on any exceptions or questions regarding eligible applicants criteria
  - Review and comment on contract requirements with fiscal agent and local governments.
  - Review monthly/quarterly reports on fund performance from fiscal agent/trustee
  - Review and comment on monthly/quarterly reports on fund performance from local government finance programs

- Adjust funding based on task 2.0 contingency plan, as outlined in this agreement

**The Contractor shall:**

- Create an application for local government finance programs for subsidy based on criteria established by CEC

Provide Fiscal Agent/Trustee management and oversight toward the following activities:

- Create RFQ or Bid Solicitation based for Fiscal Agent/Trustee
- Select Fiscal Agent/Trustee through RFQ or Bid Solicitation
- Enter contract/agreement with Fiscal Agent/Trustee
- Request funds from CEC to be placed with Fiscal Agent/Trustee
- Give direction on allocation of funds to selected local government finance program (or other) applicants
- Request monthly/quarterly reports on fund performance, distribution, etc.
- Pay in accordance with invoices received

Manage funds including:

- Allocate funds to selected local government finance programs (or other) at LGC direction
- Allocate up to 10% of funds distributed to Local Government Commission for administrative costs (following contract term)
- Deliver monthly/quarterly reports on fund performance, distribution, etc.
- Invoice LGC on monthly/quarterly basis for services

The Contractor shall be responsible for Applicant Management:

- Publicize information to local governments about availability of subsidy funds
- Select local government finance programs for subsidy funds through application process
- Consult with Energy Commission on exceptions
- Enter contract/agreement with selected local government finance programs
- Request Fiscal Agent/Trustee to disburse funds to selected local government finance programs
- Request and review monthly/quarterly reports from local government finance programs
- Request monthly/quarterly reports on fund performance, distribution, etc. from Fiscal Agent
- Evaluating performance of local government finance programs

**Contractor Deliverables:**

- Subsidy Application
- Competitive Solicitation or Non-Competitive Bid Justification Pursuant to Procurement Terms as Outlines in the Terms and Conditions of this Agreement
- Evaluation of Fiscal Agent

- Contract with Fiscal Agent
- Reports & Invoices from Fiscal Agent
- Notice of Funding Availability to Local Governments
- Evaluation of Local Government Applications
- Contract/Agreement with Local Governments
- Local Government Reports & Invoices
- Fiscal Agent/Trustee Reports
- Evaluation of Program Performance

## **B. PACE Financing Pilot Programs**

The goal of this activity is to create pilot PACE programs under the larger statewide program that will address the traditional financial barriers faced by property owners seeking to fund retrofit projects and allay the concerns raised by FHFA and OCC. In addition to testing the viability of PACE financing, the pilots will encourage and ensure replication outside the pilot regions by developing guidance documents, including lessons learned and recommendation, and actively providing technical support to local governments pursuing duplication of the pilots.

The Contractor will engage the County of Sonoma to establish a residential PACE Pilot program within its region that will align with the elements of *Energy Upgrade California* in Attachment 1, overcome the obstacles introduced by the FHFA, and be easily replicable by other California regions interested in establishing a residential PACE program. Additionally the Contractor will fund the County of Sonoma to implement a line of credit mechanism to reduce the barriers to entry of the SCEIP program and increase the access to small business contractors.

The Contractor will engage the Community Development Department of Los Angeles to establish a commercial PACE Pilot program within its region that will align with the elements of *Energy Upgrade California* in Attachment 1, overcome the obstacles introduced by the OCC, include a strong focus on retro-commissioning, and be easily replicable by other California regions interested in establishing a residential PACE program.

In its subcontracts with the County of Sonoma and Community Development Department of Los Angeles, Contractor may task those subcontractors with carrying out the day-to-day activities associated with this effort. Contractor shall remain responsible for all deliverables.

Funds not expended under this task may be reallocated by mutual consent as outlined above in the 2.0 task contingency plan.

### **The Contractor shall:**

- Draft and execute subcontracts with each of the Pilot Program lead agencies.
- Implement subcontracts substantially in the form of the attached scopes of work and budgets (**Attachments 2 and 3**).

- Ensure that each pilot program does the following:
  - Drafts and submits a draft and final Implementation Plan; these pilot program Implementation Plans must include the same elements identified in the Master Agreement under Task 2.1;
  - Drafts and submits a draft and final Program Sustainability Plan; these pilot program Sustainability Plans must include the same elements identified in the Master Agreement under Task 2.1;
  - Conducts specialized outreach and marketing for the pilot programs;
  - Support the Quality Assurance, Energy Audit and Energy Savings Verification tasks for the pilot program where applicable;
  - Submits reporting data for the pilot program to LGC or EA, as appropriate;
  - Drafts a section of the Final Report (as described in Task 1 of the Master Agreement) that includes lessons learned, recommendations for replication and scaling up of the pilot program, including the elements necessary for successful replication and scaling of the pilot program;
  - Reaches out to local governments around the state to encourage replication of the pilot;
  - Provides technical support to local governments around the state for replication of the pilots;
- Compile and submit reporting data from pilot programs

#### **Deliverables:**

- Program Leads for each pilot program
- Draft and final subcontracts with the Program Lead for each pilot program
- Sections for each pilot program to be included in the Final Report (Task 1)
- Reporting data for each pilot program, to be submitted as part of reports in Task 1.
- If bonds are issued, bond documents including local obligation and revenue bond indentures and bond purchase agreement will be included in the Program Report for each county containing the information required by California Streets and Highways Code Section 5898.22
- Adopted local agency Resolutions to Join, Resolutions of Intention to Finance Installation of Improvements, and Resolutions Confirming the Program Report
- Notices provided to water and electricity service providers
- Summary of validation action results
- Assessment payment schedules

### **B. 1. Residential PACE Program**

#### **The Contractor shall:**

- Establish and oversee a residential PACE pilot program to demonstrate the viability of PACE financing for the residential market
  - Align the pilot program with DOE's Guidelines for Pilot PACE Financing Programs and other guidelines specified by the Energy Commission

- Enter into a funding agreement with Sonoma County substantially in the form of the Energy Commission-approved Scope of Work in Attachment 2 to lead this program and assist other local jurisdictions that are interested in adopting Sonoma County's model for residential PACE financing
- Determine best methods to overcome FHFA's objections to PACE financing; these "best practice" methods will be included in the Final Report
- Establish a line of credit financed through a Revolving Loan Fund from this Agreement to fund single family residential contractors for projects they complete under the SCEIP program
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#### **a. Pooled Bonding / Financing**

The goal of this task is to research and implement a pooled PACE assessment bonding strategy which will allow jurisdictions to bring their assessments to market to obtain financing more quickly when program need requires, by pooling contracts rather than trying to drive a program to a marketable scale before bonding. An estimated \$20,000,000 bond issuance may be the right size for the Program, and this is a large amount of financing to carry before replenishing program funds through issuance.

Pooled bonding will enable programs using the SCEIP residential PACE model to bring their program assessments to market in a bond or other financing method more quickly when program need requires, ensuring the continued viability of the programs by replenishing their available funding pool. The benefit of developing a pooled bonding model will be to help create a viable source of liquidity in the secondary financial markets. Once established, it is anticipated that a secondary market for energy assessment financing will help to drive down overall costs for energy assessment financing, and will provide an easily accessible ongoing source of funding for PACE type programs. And, perhaps most importantly, as the cost of financing for property owners is decreased, so is the perceived risk of default to FHFA (Fannie Mae/Freddie Mac) decreased. In turn, as time progresses and there is a continued growth of actual data demonstrating the success of energy financing as a means of decreasing first mortgage default rates, then the perceived risk of default by properties with energy assessment financing should be alleviated. Additionally, a pooled bonding approach will allow the FHFA to see a diverse sample of participants and monitor the levels of defaults from a large group of program participants. Over time, as the FHFA discovers that there may not be an increase in tax sales or mortgage defaults associated with properties in the program as compared to properties not participating in the program, the FHFA may become more comfortable with the creditworthiness of homeowners involved in PACE programs. Pooled Bonding may achieve this by pooling contracts rather than trying to drive an individual and potentially smaller program to a marketable scale before bonding.

There are several potential strategies that could work for a pooled bonding strategy. One approach would involve counties structuring bonds secured by their assessment contracts and selling those bonds to a multi-county JPA established specifically for this purpose. The JPA would then issue revenue bonds, structured either as a single series

or utilizing a senior/subordinate lien structure to achieve high ratings for the senior lien bonds. Another approach would involve counties actually selling their assessment contracts to a single purpose non-profit entity or JPA, which would issue multiple revenue bonds.

Under either approach, revenue bonds could be sold by way of public offering or by way of private or direct placement. Investors could include banks or other financial institutions or an unconventional purchaser such as a county retirement system. In addition there are several pieces of pending legislation that if passed, could widely open up the market for these types of financings and greatly improve the salability of the bonds. Examples include: proposals by the Department of Energy to back PACE bonds either in the form of a guarantor or as a direct purchaser and by USDA Energy Group to potentially back PACE bonds as a direct purchaser; pending federal legislation to make PACE bonds tax exempt (HR3525, Thompson); adopted state legislation to establish a PACE bond reserve fund (SB 77, Ch. 15 of Statutes of 2010, Pavley); and pending state legislation authorizing the Treasurer to purchase PACE bonds from specified state funds (AB 1873, Huffman, enrolled, awaiting signature)

These and other financing strategies need to be evaluated in terms of cost, ease of use, legal authorization, market acceptance and ability to scale the program to include more counties and larger amounts of assessment contracts. The program will investigate financing options broadly, rather than committing to a specific strategy, so that there are as many potential financial options as possible available.

At this point, there is not a developed market for this type of a bond or other pooled financing program. By assembling a financing team, surveying potential investors and exploring alternative financing structures, SCEIP will develop a list of viable financing options that could be used by any PACE program. In addition, SCEIP will implement one of these options if possible.

### **The Contractor shall:**

1. Engage KNN Public Finance, existing Financial Advisor, to prepare scope of work, and Requests for Proposals for financing team:
  - Consultant with expertise in assessment district financing, the Teeter Plan<sup>23</sup> and asset securitization<sup>24</sup>
  - Other professionals as needed
  - Select the subcontractors

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<sup>23</sup> First enacted in 1949, the **Teeter Plan** provides [California counties](#) with an optional alternative method for allocating delinquent [property tax](#) revenues. Using the [accrual](#) method of [accounting](#) under the Teeter Plan, counties allocate property tax revenues based on the total amount of property taxes billed, but not yet collected. The Teeter Plan allows counties to finance property tax receipts for local agencies by borrowing money to advance [cash](#) to each taxing jurisdiction in an amount equal to the current year's delinquent property taxes. In exchange, the counties receive the [penalties](#) and [interest](#) on the delinquent taxes when collected.

<sup>24</sup> Asset securitization is the structured process whereby interests in loans and other receivables are packaged, underwritten, and sold in the form of "asset-backed" securities. From the perspective of credit originators, this market enables them to transfer some of the risks of ownership to parties more willing or able to manage them.



2. Conduct pooled bonding and alternative financing strategy feasibility analysis
  - Prepare a menu of financing options for PACE assessment bonding programs
  - Evaluate feasibility in terms of market acceptance, cost, legal authorization, tax implications, scalability, etc.
  - Develop a Term Sheet or Term Sheets describing the terms of the transaction and distribute to potential investors to solicit interest in alternative financing structures.
  - Meet with rating agencies to explain the characteristics of PACE bonds, and identify the structures most likely to achieve the highest investment grade ratings possible.
  - Evaluate potential credit enhancement programs from the Department of Energy, USDA Energy Group and others as well as other forms of credit enhancement such as the Teeter Plan.
  - Evaluate other potential financing program models as a part of this research
3. Implement a financing strategy:
  - Assemble finance team
  - Structure an initial bond financing
  - Prepare the official statement (if necessary)
  - Secure a rating (if necessary)
  - Conduct investor outreach to develop potential bidder interest in the transaction
  - Successfully price and close the bond transaction if market conditions permit.
4. Design structure of the financing, including
  - Revenue bonds or securitization
  - Senior subordinate structure
  - Application of Teeter Plan
  - Reserves
  - Covenants
5. Determine whether and, if so, how and with what constraints design options can fit within protection of existing validation action or whether new validation action is necessary and, if so implement a validation action under Section 860 et seq. of the Code of Civil Procedure.
6. Determine how to address federal securities issues
7. Prepare required documentation Respond to questions and suggestions from underwriters and rating agencies

### **Deliverables:**

- Consultant RFP and award, and other professionals RFP and award, as needed
- Draft feasibility study of financing options
- Final feasibility study of financing options
- Closed Bond Transaction or other financing strategy method/plan (to the extent that all funds are not utilized associated with the first funding phase they will go towards the cost of issuance associated with pricing and closing one financing strategy).

## **b. Hub Tool: Customization of the Statewide Web Portal**

The goal of this activity is to provide support and consultation for the appropriate design and necessary elements of a customization of the planned statewide web portal for the enhanced SCEIP program including the residential PACE mechanism. There is a critical need for technology advancements that will provide a process tool that covers the full lifecycle of a project, beginning with an outward-facing website application and extending to application tracking services, processing for applications and back-end operations, tracking and reporting of data associated to project and program costs (payback, GHG emissions reductions, energy and water savings), and calculating and reporting job-years created through projects funded by the program. SCEIP is in a unique position as an operating PACE program with a data warehouse of over 1700 applicants and 1049 projects completed and funded.

SCEIP will work with the statewide web portal developer to accelerate the development of modules for the customization of the statewide integrated web portal for residential PACE pilot programs. SCEIP also represents an opportunity to prove the concept of the one-stop-shop, local portal for multiple climate and energy efficiency programs and efforts in a region requiring integration to present the one-stop-shop face to the consumer (Hub Tool) to minimize confusion. SCEIP will incorporate local or regional co-branding and program collaboration efforts, and will provide an early and helpful opportunity to connect with the RCPA Regional Residential Retrofit Program as part of *Energy Upgrade California*.

This deliverable will be the foundation of the back-end program management needs for SCEIP including PACE. This set of solutions may require, if approved by the Energy Commission, priority action by the statewide web developer for development or purchase of a third party plug-in solution as part of this activity. Finally, SCEIP may require flexibility in the implementation of the statewide web portal platform. SCEIP is in operation and adapting the processes and systems to a new platform will have significant impacts to our operation as opposed to programs planning their launch.

### **The Contractor shall:**

1. Make available to the statewide web portal developers the RFP, technical and functional requirements, and supporting documents originally proposed for the one-stop-shop web portal and program and data management combination concept.
2. Work with Renewable Funding as the contractor delivering the statewide web portal to develop a project plan for development of SCEIP's customized solution for PACE programs. This scope of work will highlight SCEIP requirements which are not included in the design of the statewide web portal at this time. These elements will be tested by SCEIP to determine their value for the statewide implementation.

3. Provide consultation to Renewable Funding on Tool Design, Development and Deployment including:
  - Testing and Training Pilot,
  - Tool Deployment, and
  - Post Implementation Review
2. Have the authority to provide access to the SCEIP customized web portal implementation to municipalities working with SCEIP in the development of the PACE propagation model for delivering *Energy Upgrade California* programs statewide for implementation of their program.
3. In the event that the statewide web portal fully satisfies the requirements of the SCEIP RFP and is released and fully functional by February 1, 2011, these funds will be expended on (a) a web portal focused marketing, outreach and educational effort to inform the community, contractors and other regions about the features and capabilities of the tool, and (b) a report documenting recommendations for features and improvements for the web portal tool not contained in the base product package, and/or (c) other relevant program expenditures aligning with the overall focus of this program and contract.

**Deliverables:**

- SCEIP “Hub Tool” Request for Proposals, and Technical and Functional Requirements Documentation (Note: this deliverable has already been completed and does not need to be funded under this subcontract.)
- Assessment of requirements presented in the SCEIP “Hub Tool” RFP not yet provided in the statewide portal project plan.
- Consultation with Renewable Funding on the statewide portal project plan to deliver PACE program requirements

**c. Residential PACE Replication Model Start Up Kit and Technical Support**

The goal of this activity is to deliver a “Residential PACE Replication Model Startup Kit” of materials in electronic format for the replication of residential PACE programs in the implementation of *Energy Upgrade California* programs at the local level. This deliverable will prepare for the deployment of residential PACE programs by providing a tested and cost-effective framework for execution when the encumbrances of the FHFA situation are resolved. Replication of the residential PACE Model will assist in the required achievement of energy savings and jobs creation with the speed and scale necessary to reach our green house gas emission reduction and energy saving goals.

The Contractor will use program resources and lessons learned to enhance SCEIP with the strategies and Elements of Energy Upgrade California to sustain and develop operation and provide a replicable model for residential PACE pending resolution of the federal determinations. These enhancements are designed to provide a replicable model for expansion to other regions in California. In addition to developing and distributing of the start-up kit, this will be accomplished by conducting outreach to local governments around the state to encourage replication of the pilot program’s residential

PACE financing, and by providing technical support to local governments in replicating the pilot program.

**The Contractor shall:**

- Conduct outreach to local governments around the state interested in implementing residential PACE to encourage replication of the pilot program;
- Provide technical support for local governments replicating the pilot program.
- Hold regular meetings/calls/webinar with appropriate contacts for interested local governments' residential PACE programs;
- Advise interested local governments on the mechanics of establishing a residential PACE program; and
- Make publicly available a guidance package of all program documents including:
  - Program marketing/outreach materials,
  - Application criteria, forms and materials
  - Final feasibility study of pooled bond financing options
  - RFQ/Ps
  - Contracts
  - Resolution language
  - Case studies, Best Practices, and Lessons Learned

**Deliverables:**

- Meeting summaries prepared by local governments with whom Contractor works
- PACE Replication Model Start-Up Kit, including program marketing/outreach materials, contracts, applications, RFQ/Ps, financing feasibility study and resolution language

**d. Contractor Credentials: Participant Recruitment and Outreach and Loading Order**

The goal of this activity is to fund education, re-education and marketing activities to inform customers and contractor participants of program changes and new opportunities that will occur as SCEIP move to align with federal/state guidelines and other program offerings. The Program will finance a focused marketing effort to re-educate participating contractors, consumers, stakeholders and the general public of the benefits of utilizing home energy audits, contractor credentials and loading order for efficiency. The Program will reprint marketing materials and collateral, perform additional outreach and education to the customer base and contractor community in various forums, and re-brand the program, both locally as well as in connection with statewide initiatives. This will be an ongoing marketing effort and strategy reframed to provide broad education and information with a new focus on the benefits of home HERS II ratings/energy audits and loading order, and new program requirements for participation. The Program will leverage the materials and information, as available, from MIG and Energy Upgrade California.

**The Contractor shall:**

1. Develop marketing, education and outreach strategy
  - Define market targets
  - Identify program features, elements, and benefits, and promotion strategy
    - New requirements and benefits of audits of homes, contractor credentials, and loading order efficiency measures and standards for projects
    - Increased residential outreach efforts to increase market penetration, awareness and program understanding
  - Define marketing, education and outreach methods (advertisements, email blasts, website updates, mailers, brochures, etc.)
  - Identify collaboration and coordination with partners
  - Prepare marketing, education, and outreach plan
2. Implement marketing education and outreach plan
  - Design, marketing, education, and outreach materials
  - Produce and distribute marketing, education, and outreach materials
  - Implement marketing, education and outreach strategy

### **Deliverables:**

- Marketing, Education, and Outreach Plan (draft and final)
- Advertisements and marketing materials
- Brochures and educational materials (draft and final)

#### **e. Sonoma County Energy Independence Program Line of Credit for Single Family Residential Contractors**

Since program inception, the SCEIP program averages between \$2.5 million and \$1.25 million in monthly assessments with seasonal variations. While this program has resulted in countless benefits for the County and State, it remains inaccessible to some small contractors due to the program bonding structure. As SCEIP issues bonds on a once monthly basis, contractors are often left carrying the cost of projects they complete for as long as 45 days. To address this, Sonoma has proposed implementing a line of credit fund that would essentially act as a revolving loan to the SCEIP program to fund project upon completion between the monthly bonding process.

Having the residential line of credit financing model available for program participants would facilitate the participation of additional small business contractors. The SCEIP program has consistently received feedback from the construction community from the very beginning of the program that the monthly bonding and financial disbursement schedule is a serious burden to their cash flow. Missing the program disbursement deadline results in an additional month before a completed project can be funded. This requires very challenging staff, project, inventory and procurement scheduling by the contractor. The line of credit financing option will address this issue by allowing for the continuous disbursement of assessment funds in a timely manner after project completion. Funded projects will then be bonded following the monthly bonding cycle, replenishing the fund and establishing an ongoing line of credit for the SCEIP program.

There are also program administration advantages to the availability of the fund. In an

effort to alleviate cash flow issues for projects, SCEIP has a multiple disbursement process that allows for partial disbursement of funds when specific criteria are met. When the disbursement is made for the partial amount the entire possible financing amount is bonded. At the completion of the project, if there is a remaining unused balance of funds then bonds must be called to adjust for any discrepancies in the actual project cost versus the estimated project cost. The bond call process is very labor intensive and has financial and resource impacts on the cost effectiveness of the PACE program. The line of credit model will allow for disbursement without bonding until these larger, multiple disbursement projects are actually complete. The average reconciliation period for these projects is 2 months. The line of credit fund can carry these assessments over the time period of the project.

SCEIP recently adjusted the multiple disbursement limit downward from \$60,000 to \$40,000 in an effort to support participating contractor cash flow. Availability of the fund may permit lowering of the fund limit to the \$20,000 amount requested by the construction community. The multiple disbursement process was originally instituted to support the high carrying cost of inventory in the solar industry. SCEIP has learned from the home performance industry that the multiple disbursement process is also critical to their success in the program. With deep retrofit projects involving multiple projects and project types, there is benefit to the primary general contractor to allow for disbursement of funds as the sub projects are completed and signed off. The line of credit will be available to single family residential projects who successfully complete projects under the SCEIP program. The line of credit will be available upon execution of the Master Agreement.

In the event that program volume drops below anticipated levels, the CCM may work with the Sonoma Residential PACE Pilot Program Administrator, the Agreement Administrator, and other relevant stakeholders to reprogram funds towards the contingency plan described in Task 2.0 of the Master Agreement.

**Deliverables:**

- Memo Requesting Draw Down of Funds to Serve as Revolving Loan Fund for Contract Line of Credit
- Information on Projects Funded, Including Energy and Water Savings as Appropriate, to be Included in Monthly Reports
- Statement of Fund Expiration, if Applicable
- Memo Requesting Funds to be Reprogrammed to Contingency Plan, if Applicable

**f. Energy Ratings and Energy Audits Program**

The goal of this activity is to provide rebates for energy audits leading to energy plans for County residents and associated with energy efficiency, water conservation and renewable generation improvement projects in Sonoma County. Access to these rebates/discounts will be for property owners interested in participation in the Energy Upgrade California programs including the Residential Retrofit Program and SCEIP. Energy audit data will allow potential applicants to evaluate their options from a

scientific perspective and gain the greatest savings available, for the lowest possible cost, and will provide the elements required to meet the efficiency standards before solar or other clean generation projects are undertaken. The Program will use a phased approach to upgrade SCEIP and increase the uptake of the Third Tier Comprehensive Whole House Program approaches once HERS II is available. These measures will increase jobs in the County, will spur Green Jobs training programs for HERS II auditors to serve our market, will allow loading order analysis of properties in applications, and will show cost effective measures for the customers to take advantage of.

Audits will be commenced within 120 days of the execution of this contract, or at launch of the upgraded SCEIP program, whichever occurs first.

In the event the Agreement term begins before certified HERS II Raters are available in the Contractor's performance region, the Contractor will use either the Energy Commission prescriptive list or an Energy Commission interim performance approach (described below) for residential buildings to meet the 10% energy efficiency improvement requirement at each site proposing solar or other clean generation projects,.

- **Prescriptive List.** To comply with the 10% energy efficiency improvement requirement, residential buildings will be required to either comply fully with and qualify for the IOU's basic prescriptive package rebate or install all of the following measures, consistent with Energy Commission technical specifications for each measure (such as Annual Fuel Utilization Efficiency rating of furnace, R-value of insulation, and specification for when measures are feasible):
  1. Air sealing
  2. Attic insulation
  3. Duct test and seal or replacement
  4. Insulation of domestic hot water or replacement
  5. Combustion safety (requires BPI Building Analyst) and
  6. CO alarm
- **Interim Performance Approach.** For residential buildings where it is not feasible to install all of the measures in the Energy Commission prescriptive list (including when some of the measures have been previously installed or when measures are otherwise not feasible as indicated in the technical specifications) or full compliance with the IOU's basic prescriptive rebate package, the prescriptive approach cannot be used. In these cases, an Energy Commission interim performance approach for the building must be used to determine compliance with the 10% energy improvement requirement prior to financing renewable energy projects for the building. The Energy Commission may consider alternate approaches to achieve its loading order policy for each residential renewable energy project site. If the Energy Commission approves an alternate approach, the PM will provide written approval from the Energy Commission of the approach to the Contractor.

- Alternate Approach: If 10% energy use reductions cannot be achieved cost-effectively, perform both 1 AND 2 or 3 below:
  1. HERS II California Energy Audit and install all of the applicable and feasible measures on the Prescriptive List above
  2. Install other measures found by the HERS II energy audit to be more cost effective than on-site renewable generation up to 10% savings
  3. HERS II California Whole-House Home Energy Rating with proof of rating of 85 or lower.

From July 1, 2011 through the end of this Agreement, energy audits must comply with HERS II standards and software. This date may be extended upon Energy Commission approval, to adjust for delays in HERS II availability if necessary.

For proposed nonresidential building sites, the PM will consider in consultation with the Energy Commission and the Contractor an energy audit methodology the Contractor will use to meet the 10% energy improvement requirement prior to financing renewable energy projects. The PM will provide written approval from the Energy Commission of the methodology. SCEIP has an internal requirement that an energy assessment be provided by the local Utility to the commercial customer before financing is approved under the program. This existing element is unique to commercial projects in this program.

SCEIP will work with the PM and the Energy Commission to develop a plan to ensure maximum uptake of energy audits, and documentation of energy efficiency improvements and GHG emissions reductions.

SCEIP contract funds will establish program guidelines for audits that can be coordinated with our Local Government Program, Sonoma County Energy Watch (SCEW), which provides coordination and assistance with utility program incentives and information. SCEIP will provide information and auditing services to those clients who are referred to the Program from the soon-to-be initiated Sonoma County Residential Retrofit Program, funded in part by the Municipal and Commercial Building Targeted Measure Retrofit Program grant received by ABAG, in addition to county funding. These programs can be coordinated in messaging and outreach efforts, so that potential customers of each can have access to incentives and information that is consistent.

All projects funded by SCEIP are required to have permits appropriate for the project from the local jurisdiction. Project permits and valid contractor licenses will be verified by each city's Building Department, and by the county for work in unincorporated areas to ensure contractors are working within their license authority. Validity of the license of all contractors is established during application evaluation, and applications are rejected if the license is not valid.

Sonoma County will provide 3 sets of residential building performance diagnostic tools for use by HERS raters locally who do not have sufficient capital to purchase their own. The tool lending library concept is a leveraged amount for our SEP contract. Sonoma



County has already purchased the tools and plans to have the lending library in place by September 30, 2010. Sonoma County Human Services Department (HSD) is responsible for the Workforce Investment Board (WIB) initiatives in the County, the General Services Director serves on the WIB, and the Energy and Sustainability Manager serves on the Green Jobs subcommittee of the local WIB. This partnership will allow engagement of local training for raters in the area, and will allow for WIB input in our processes. However, the local WIB is not a partner or subcontractor under this contract.

The program proposes to offer cost offset of audits to all projects in the *Energy Upgrade California* program, including those containing only efficiency improvements, to maximize the potential energy and cost savings potentials for each customer. If HERS II audits are available for the project type, the program will require their use. However, if HERS II audits are not applicable, as in the case of multi-family, SCEIP will require the use of an Energy Commission-approved energy audit methodology.

SCEIP will leverage the existing Local Government Partnership (SCEW) with PG&E, and all other utility programs or efficiency programs from the state or federal levels, providing information and guidance on all of these opportunities. This will maximize the financial leverage of program and contract funding, accessing outside funding to reduce project costs.

#### **The Contractor shall:**

1. Modify and refine the existing program to include the Energy Commission-approved prescriptive list, Energy Commission-approved performance approach, and HERS II audits when available, before funding renewable generation projects, and to help generate a scalable market where pricing becomes more competitive:
  - a. Add requirements for home auditing, and minimum energy efficiency improvement thresholds, and methods to achieve and verify the energy efficiency improvements as a part of clean energy generation projects
  - b. Add requirements for commercial auditing, and minimum energy efficiency improvement thresholds, and methods to achieve and verify the energy efficiency improvements, as part of clean generation projects
  - c. Incorporate the established HERS “Third Party Quality Control” system into SCEIP
  - d. Align SCEIP program parameters with the Tier 3 Comprehensive Whole House Retrofit Program goals in the following sectors by:
    - i. Residential: assisting in providing support, meeting space, marketing leverage, and public speaking events for local efforts to train the local workforce in HERS II and building performance; incentives applied directly to applications including residential building performance audits.
    - ii. Commercial: the program currently requires a utility energy evaluation for commercial participation in SCEIP. SCEIP will

facilitate coordination on plans of individual buildings with coordinated support of the Sonoma County Energy Watch program, SCEIP, utility rebates and incentives with the Sonoma County Retrofit/ Renewable program launching next spring. The program will require a utility assessment of the project, and an analysis by an energy professional to determine efficiency opportunities.

- iii. Multi-family: these projects currently participate in the prescriptive lists of eligible improvements under either the commercial model (apartments) by the property owner or as a single unit if secured property tax is held by the property owner. SCEIP will collaborate with the Energy Commission and other ARRA SEP multi-family programs to establish energy audit approaches and potential prescriptive packages to achieve Tier 3 goals.
  - e. Develop and implement a program to evaluate the impact of required audits on participation and the impact of audits on the choice of improvements
  - f. Develop and implement a program for obtaining pre-retrofit and post-retrofit utility billing data at the time of application, and as a condition of program participation.
  - g. Develop and implement a Building Performance Tool Lending Library Operation
  - h. Incorporate a process to track program results
    - i. The implementation of the Statewide Web Portal beta for SCEIP through this funding (workflow/database tool) will provide data on audit uptake and savings achieved in relation to the audits.
2. Provide energy audits to applicants using a schedule of incentives similar to the California Solar Rebate rate approach.
- a. Spend up to \$700,000 on energy audits and administration depending on the rate of energy audit uptake. Offer incentives to help offset the costs of residential audits in a decreasing amount over time. Intend to provide an incentive of up to \$525 (estimated) or 75% of the cost of the audits for the first 500 audits (whichever is lower), 50% next 500 audits, 25% next 500 audits.
  - b. In the event audit uptake is slower than anticipated over the first 6 to 9 months of the contract, funds will be expended on energy audit-focused marketing, outreach and education
  - c. Develop and implement Building Performance Audit Incentives and Discounts
  - d. Develop audit methodology for commercial properties. The commercial property audit methodology must be approved in advance by the Energy Commission.
  - e. Incorporate test-in/test-out procedures and completion of the HERS II Certificate of Field Verification and Diagnostic Testing for the energy audits.

3. Leverage collaborative relationships to launch and implement County-wide retrofits and Training Programs:
  - a. County-wide Retrofit Program (*Energy Upgrade California*)
    - i. Collaboration with Sonoma County Transportation Authority County-Wide Retrofit and Renewables Program designing an implementation plan to retrofit 80% of all buildings in Sonoma County
  - b. Building performance seminars for contractors and home audits
    - i. SCEIP support, have sponsored and will continue to provide training opportunities for local contractors in the area, using CBPCA, and other professional training programs, to help train contractors in building science.
  - c. Training and coordination with partners
    - i. Continued support of local workforce training in building performance; HERS II certification and BPI certification training; Sonoma County Workforce Investment Board plan "Working with California Clean Energy Workforce Training Program SFP"
    - ii. Collaboration with Pacific Energy Center Resources

**Deliverables:**

- Refined Program Guidelines & Documentation and Storefront SOP revisions to implement audits in the program workflow (draft and final)
- Updated Reporting Processes incorporated into the statewide web portal
- Tool Lending Library Standard Operating Procedures
- Rate schedule and financing structure for home energy audits incentive implementation (draft and final)
- Audit-focused marketing, outreach and education materials (drafts and finals)

**Note:**

1. Contingency deliverable to be accomplished in the event that energy audit uptake is slower than anticipated over the first 6 to 9 months of the contract. Contingency plan to be implemented pursuant to the protocol laid out in Task 2.0.

**B.2. Commercial PACE Program**

**The Contractor shall:**

- Establish and oversee a commercial PACE pilot program to demonstrate the viability of PACE financing for the commercial market
  - Align the commercial PACE pilot with DOE's *Guidelines for Pilot PACE Financing Programs* and other guidelines specified by the Energy Commission;
  - Enter into a funding agreement with Community Development Department of the City of Los Angeles (CRA/LA) substantially in the form of the Energy Commission-approved Scope of Work in Attachment 3 to lead this

program and assist other local jurisdictions that are interested in adopting the model developed under this pilot program for commercial PACE financing

- Determine best methods to overcome OCC's objections to PACE financing; these "best practice" methods will be included in the Final Report (as described in Task 1 of the Master Agreement)

#### **a. Participation in Los Angeles County's Energy Program**

The goal of this activity is for the City of Los Angeles (City) to participate in the Los Angeles County Energy Program (LACEP), which provides financing to property owners within Los Angeles County (County) for the installation of water and energy efficiency measures. The Los Angeles County Board of Supervisors has already passed a resolution which establishes a county-wide municipal financing district, referred to as LACEP. A city within Los Angeles County can participate in LACEP upon each city's adoption of a resolution approving participation. This Program is specific to the City of Los Angeles, thus projects within the scope of this subcontract must be commercial properties within the boundaries of the City of Los Angeles. Upon the County's completion of judicial validation proceedings that establish the legal priority of municipal financing contractual assessments, the county will make available sample resolution language to all 88 cities within its jurisdiction, allowing them to "opt in" to the overarching special tax district. The City will opt into LACEP to meet the legal requirements established under AB 811 for the formation of PACE districts in order to implement the Commercial PACE Pilot Program that is the subject of this subcontract. The legal work necessary to establish and opt into the Los Angeles County PACE district will, however, not be funded under this subcontract.

#### **The Contractor shall:**

- Provide technical review of documents drafted by the county related to establishment of the LACEP, including but not limited to any resolutions required by the city to participate and agreements between the city and county to levy the special assessment upon project approval;
- Work with city staff to obtain Los Angeles City Council approval of a resolution to allow the city to join the LACEP. Brief the City Council on the Program as necessary, to ensure passage of the resolution; and
- Provide a copy of the resolution to the Los Angeles City Attorney's office for its review and approval. The drafting, review and approval of this resolution will not be funded as part of this subcontract.

#### **Deliverables:**

- Los Angeles City Council resolution approving the city's participation in the county's municipal financing district (no draft)

#### **b. Participation in Meetings with Key Stakeholder Groups**

The goal of this activity is to meet with key stakeholders, including retrofit lenders, commercial building owners, clean energy service firms, mortgage lenders, labor unions, and the Los Angeles Department of Water and Power. The Contractor's

Program team<sup>25</sup> will reach out to key stakeholders to compile and verify baseline data necessary to identify effective approaches to secure commercial building owner and lender participation in the Program. The Contractor will conduct meetings with stakeholders to gain input on Program design and determine how best to overcome mortgage lender and OCC objections to PACE assessments with a priority lien position to the first mortgage. Based on market research/analysis and stakeholder input, the Contractor will build the Program structure and guidance documents, including: guidelines that include, but are not limited to, a list of eligible projects, performance standards, and quality assurance protocols; an administrative manual; a strategy for integration with existing programs and incentives; plan for addressing OCC and mortgage lender concerns; and a plan for Program management, evaluation, measurement, and reporting. There will be a summary of lessons learned based on transcripts of these meetings, which will be shared with other cities interested in establishing programs to incentivize energy efficiency upgrades to commercial buildings. Sustento Group and CCI will provide additional program development support to local governments interested in establishing similar programs as described above.

**The Contractor shall:**

- Hold meetings with key stakeholders, including lenders, building owners, clean energy service firms, mortgage lenders, labor unions, and the Los Angeles Department of Water and Power;
- Develop a detailed outreach plan that includes names and contact information for program stakeholders, a summary of actions taken (i.e., calls and meetings), and a list of follow-up activities; and
- Develop a program structure and guidance documents based on stakeholder input, including:
  - Program guidelines that include but are not limited to a list of eligible projects, performance standards, and quality assurance protocols;
  - An administrative manual;
  - A plan for addressing OCC and mortgage lender concerns;
  - A strategy for integration with existing programs and incentives; and
  - A plan for Program management, evaluation, measurement, and reporting.

**Deliverables:**

- Outreach plan
- Program guidance documents

**c. Development of Participant Eligibility Criteria and Project Agreements**

The goal of this activity is to develop property eligibility criteria and agreements between the City, the County, and commercial building owners to mitigate risks and increase lender confidence. While the details of the retrofit assessment terms would be arranged by commercial building owners and lenders rather than by the City, the Contractor will put in place programmatic requirements, including, but not limited, to property location, legal ownership, commercial building owner's property tax payment history, approval

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<sup>25</sup> The team will consist of Sustento Group, the Contractor's Program Coordinator, Manager of Capital Finance, Special Projects Officer, Project Development Manager, Public Affairs Specialist, and Website Developer.

from the building's primary mortgage holder. Agreements will be designed to ensure that the special assessment and tax lien are provided as security for retrofit lenders that city, county and lender liability are minimized, and that high quality energy efficiency projects are completed. To ensure cost-effectiveness, projects will be structured so that projected energy savings support or exceed the debt service for the term of financing. While the funding under this Agreement may not fund legal work, Contractor may coordinate with legal counsel funded by third parties to accomplish this activity.

To maximize efficiency, project agreements will be standardized to the extent possible. Form contracts will ensure building owner mitigation against performance risk of installed improvements and compliance with state permitting and contractor licensing requirements. Agreements between the City and County (if necessary) will detail the process by which the City notifies the County of project approval, and the County's responsibility to levy special assessments against property. Agreements between the County and commercial building owners will outline the County's right to foreclose on tax liens in the event of default and will ensure that building owners are solely responsible for payment of special assessments. Commercial building owners will develop and negotiate documents directly with retrofit contractors and lenders, including approval from the primary mortgage holders on their properties. The Program will develop a form agreement / contract by which mortgage-holders grant consent to the PACE financing and the first priority lien, according to the terms of the specific agreement.

**The Contractor shall:**

- Establish property eligibility criteria for commercial building owners who participate in the Program. These criteria will be crafted to provide appropriate protection to the City, County, building owner, retrofit lenders and mortgage holders;
- Work with legal counsel and the county to address legal issues and establish legal relationships between Program participants; and
- Develop and/or review agreements between the City, County, and commercial building owners. The number and types of agreements will be determined through consultation with legal counsel and the County.

**Deliverables:**

- Program property eligibility criteria for participating commercial building owners
- Agreements between the city, county, and commercial building owners (no draft)

**d. Development of Marketing Materials and Outreach Strategy**

The goal of this activity is to develop Program marketing materials and a marketing outreach strategy. The marketing materials will provide detailed information about Program requirements, the application and approval process, and the manner in which the tax lien mechanism can provide security for private financing. The Contractor's Public Affairs Department and/or marketing consultant will help the Program Coordinator develop a marketing and outreach strategy and design marketing materials. Marketing materials will also be developed, as appropriate, through coordination between the Contractor's marketing and *Energy Upgrade California*, the statewide

energy efficiency program. All marketing materials and outreach strategies shall be consistent with and complementary to *Energy Upgrade California*.

**The Contractor shall:**

- Develop a marketing and outreach strategy consistent with and complementary to *Energy Upgrade California* Design Guidelines to educate commercial building owners, retrofit contractors, and potential retrofit lenders about Program mechanics, risks, costs, and benefits;
- Develop marketing and outreach strategy to educate other local jurisdictions about replication of the Program;
- Produce marketing materials that can be distributed at informational sessions held for potential building owners and for qualified retrofit contractors. The Contractor will conduct the sessions in coordination with Sustento Group and the Clinton Climate Initiative. Marketing materials may include a logo, educational pamphlets, and PowerPoint presentations. These materials will be posted on city agency and social networking websites; and
- Ensure that marketing materials contain the *Energy Upgrade California* Identity Mark/Logo, as specified in Exhibit D of the Agreement between the Energy Commission and LGC.

**Deliverables:**

- Marketing and outreach strategy
- Marketing materials

**e. Collaboration on Customized Web Portal for Submission of Applications**

The goal of this activity is to provide direction on a customized section of the *Energy Upgrade California* web portal to receive applications for the Program and to provide Program information to potential participants. The customized web portal will be a one-stop resource center for participants. The portal will provide all necessary Program application documents, information about federal, state, and local incentives available for energy efficiency projects, and step-by-step instructions on how to participate in the Program. The portal will be linked to the county's LACEP web portal. Application procedures will be automated to the maximum extent possible, and applicants will be able to track their progress on a real-time basis. The website will be integrated with, consistent with and complementary to the web portal developed under *Energy Upgrade California* to the extent feasible.

**The Contractor shall:**

- Provide direction on a customized section of the *Energy Upgrade California* web portal;
- Draft a summary of website software functionality and security features; and
- Provide the LGCPM with a walk-through of the fully-integrated, functional website.

**Deliverables:**

- Summary of website software functionality and security features

#### **f. Creation and Management of Loan Loss Reserve Fund for Retrofit Financing**

The goal of this activity is for the Contractor to create and manage a loan loss reserve (debt service reserve) fund. Widespread implementation of the Program is contingent on retrofit lenders providing loans to interested building owners, and on first mortgagees consenting to financing. Based on preliminary conversations with potential lenders, a 5% to 10% loan loss / debt service reserve may be required to provide additional security to lenders and to encourage their participation in the Program. This loan loss reserve fund shall equal no more than 10% of the total debt on a single project.

##### **The Contractor shall:**

- Create a loan loss reserve fund and provide reserve commitments to lenders and/or existing mortgage holders as projects are approved;
- Provide the LGCPM written notice that the loan loss reserve fund has been created. The notice will include the fund's location and amount, and measures taken to ensure compliance with DOE's criteria<sup>26</sup> for the establishment and maintenance of SEP-funded loan loss reserve funds;
- Continually monitor the fund;
- Submit to the LGCPM reporting documents tracking loan loss reserve fund outgoing payments, including documentation of reserve commitments to lenders and/or existing mortgage holders, and incoming repayments from commercial property owners;
- Determine eligibility criteria for borrowers to access the loan loss reserve fund; and
- Collaborate with the Energy Commission and DOE to determine in a Loan Loss Transition Plan the use of SEP funds remaining in the loan loss reserve when this subcontract ends.

##### **Deliverables:**

- Notification to the LGCPM that the loan loss reserve fund has been created
- Eligibility criteria for borrowers to access the loan loss reserve fund
- Reporting documents tracking loan loss reserve fund outgoing payments and incoming repayments from commercial property owners
- Loan Loss Transition Plan

#### **g. Funding of Retro-commissioning and Energy Audits**

The goal of this activity is to fund Phase I Scoping Energy Audits and Phase II Investment Grade Audits (IGA) for qualified commercial building owners, who will apply for Phase I and Phase II energy audits before submitting a full application for the tax lien and/or LLR and negotiation of financing to cover costs of retrofit projects. The Contractor will establish a list of pre-qualified energy audit sub-contractors to conduct the Phase I and Phase II Energy Audits. These sub-contractors will be listed on the web portal so that qualified commercial property owners, if approved, can select an energy audit sub-contractor from the web portal. No-cost energy audits will increase Program participation and enable the Contractor to gather a rich data set of pre- and post- retrofit information. For commercial property owners who already have smart

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<sup>26</sup> [http://www1.eere.energy.gov/wip/pdfs/sep\\_financing\\_guidance2010\\_08\\_10.pdf](http://www1.eere.energy.gov/wip/pdfs/sep_financing_guidance2010_08_10.pdf)



meters in place, pre-retrofit data can be collected through LADWP's MV Web program<sup>27</sup>. Commercial building owner applicants will be required to participate in LADWP's MV Web or Energy Load Monitoring programs. Post-retrofit data will be collected through these programs, and/or through direct follow up. Phase I and II audits will be fully funded upon approval of a commercial building owner's approved application.

The Contractor will meet with commercial building owners and retrofit contractors to discuss the Program, and will incorporate their feedback into audit eligibility criteria prior to finalizing the audit application. Follow up with targeted stakeholders will continue throughout the design and rollout process.

### **The Contractor shall:**

- Locate potential projects through marketing and outreach to key commercial building owners and retrofit contractors in the city;
- Follow up with targeted stakeholders throughout the design and rollout process;
- Create tracking reports detailing the number of applicants, locations and approval rates. Once this functionality is available on the Program web portal, it will be used for all project tracking and reports;
- Incorporate retrofit contractor and commercial building owner feedback into energy audit eligibility criteria and the audit application process. The process must adhere to the requirement in the Energy Commission's *State Energy Program Guidelines*<sup>28</sup> of a minimum 10% total building energy use reduction through efficiency measures identified in the audit as a condition of funding renewable energy measures;
- Evaluate applications for the funding of energy audits;
- Submit copies of Phase I and II energy audit applications and approval status to the LGCPM. For proposed non-residential and multi-family building sites outside the scope of Phase Two of the Home Energy Rating System (HERS II), the LGCPM will consider, in consultation with the Contractor, an energy audit methodology the Contractor will use to meet the 10% energy improvement requirement prior to financing renewable projects. The LGCPM will provide written approval of the methodology;
- Fund approved applications based on established eligibility criteria, which will include post-installation quality verification; and
- Ensure that CCI and/or Sustento Group, and/or Program Vendors:
  - Provide project development support for commercial property owners undertaking energy efficiency retrofit work
  - Provides commercial property owners template RFQ and RFP documents to aid in locating qualified providers. These will be posted on the Program website and made available to other local governments interested in establishing similar programs.

### **Deliverables:**

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<sup>27</sup> LADWP provides data over the internet through two different software programs: the MV-Web program provides usage data and basic graphs free of charge, and the low-cost Energy Load Monitoring service allows customers to view and graph both energy and cost information

<sup>28</sup> The guidelines are located at: <http://www.energy.ca.gov/recovery/sep.html>.

- Tracking reports on number of applicants, location, and approval rates
- Copies of Phase I and/or Phase II energy audit applications and approval status

#### **h. Development of Quality Assurance Procedures**

The goal of this activity is for the Contractor to develop quality assurance procedures for each project that justify projected savings calculations, based on data from the Phase I and Phase II energy audits included in the tax lien application. The procedures must be met prior to approval of the tax lien application and project funding.

The procedures will be designed to maintain the Program's cost-effectiveness, energy savings benefits, and reputation. Commercial property owners and/or retrofit contractors will complete rigorous engineering and design work to justify projected savings calculation included in the application. LADWP will provide verification of the quality of the installation of the measures through its normal post-installation rebate verification. The Program will ensure that these quality assurance plans are carried out to insure quality installation.

#### **The Contractor shall:**

- Leverage quality assurance procedures conducted as part of LADWP's rebate and incentive programs as one means to accomplishing Quality Assurance plans for each project;
- Submit the quality assurance plans to the LGCPM for approval;
- Verify that Quality Assurance plans are implemented;
- Require commercial property owners and/or retrofit contractors to complete rigorous engineering and design work that justifies all projected savings calculations included in the application package, including the minimum 10% energy efficiency savings through Program-funded energy efficiency measures prior to financing renewable energy projects;
- Require commercial property owners to submit an appropriately detailed measurement and verification plan as part of the tax lien application process (see 2.5, C.j for details on how the city will verify reported energy savings); and
- Provide written documentation of implementation of Quality Assurance plans, including post-installation quality verification, such as LADWP's ELMP or MV Web Program or an alternate equivalent or better energy monitoring system, conducted on each funded project.

#### **Deliverables:**

- Quality assurance procedures and benchmarks for each project
- Documentation of installation quality assurance measures and post-installation energy verification conducted on each project from LADWP

#### **i. Verification of Energy Savings from Completed Projects**

The goal of this activity is for the Contractor to conduct post energy retrofit verification of reported energy savings. In order to ensure that projects funded through the Program achieve and sustain GHG emissions reductions, the city will recommend that energy savings are measured and verified according to the Efficiency Valuation Organization's

International Performance Measurement and Verification Protocol (IPMVP) and recommend that either: (1) savings are guaranteed by a licensed, experienced, reputable, and creditworthy contractor; or (2) energy savings insurance is purchased (if available) to mitigate against performance risk.

IPMVP “Option C” (Whole Building) best describes the scope of measurement and verification recommended in the form contracts that will be developed and required for financing secured through the Program. Energy savings must be calculated using a DOE-approved software tool, such as e-QUEST or Trace 700, that qualifies under the criteria listed on DOE’s “Qualifying Software for Calculating Commercial Building Tax Deductions” website: [http://www1.eere.energy.gov/buildings/qualified\\_software.html](http://www1.eere.energy.gov/buildings/qualified_software.html).

In addition, the Contractor will require participating commercial property owners to participate in LADWP’s ELMP or MV Web Program or an alternate equivalent or better energy monitoring system. The ELMP enables owners to:

- Display load profiles in daily or multiple-day timeframes and in either graphical or tabular format
- Overlay and compare data from other timeframes or other meters
- Export data to standard spreadsheet format for further analysis
- Provide demand and consumption details on specified timeframes (Data is not currently broken down to time-of-use periods, with the exception of one report)
- Group and/or aggregate data for multiple meters
- Generate bill estimates and perform cost analyses based on actual energy usage and modeled LADWP rates
- Perform what-if scenarios by applying energy and/or demand multipliers
- Compare energy load data with Weather data from National Weather Service Stations
- Scheduled reports that are automatically emailed to designated recipients at specified times.

**The Contractor shall:**

- Require Program participants to measure and verify energy savings;
- Submit measurement and verification documents and forms to the LGCPM;
- Collect all pre- and post-retrofit data for internal and external reporting purposes;
- Analyze collected building consumption data;
- Draft post-retrofit consumption reports;
- Draft a report summarizing building consumption data trended and analyzed over the term of the contract period; and
- Ensure that property owners participate in one of the following:
  - LADWP's ELMP or MV Web Program
  - An alternate equivalent or better energy monitoring system
    - In either case, the commercial building owner will be requested to provide annual reporting data to the Contractor

**Deliverables:**

- Measurement and verification documents and forms
- Post-audit consumption reports
- Report summarizing building consumption data trended and analyzed over the term of the contract period.
- Documentation of commercial property owners' participation in ELMP or alternate energy-load monitoring system

**j. Processing of Tax Lien Applications**

The goal of this activity is to process tax lien applications for qualified commercial building owners.

**The Contractor shall:**

- Collect tax lien applications via a web portal;
- Evaluate applications and forward acceptable proposals to the County; and
- Submit to the LGCPM copies of approved and rejected proposals. Rejected proposals must include the reason(s) for rejection.

**Deliverables:**

- Copies of approved proposals
- Copies of rejected proposals, including reason(s) for rejection

#### **k. Creation of Tax Lien**

The goal of this activity is for the Contractor to create tax liens that will be used as security for private financing.

##### **The Contractor shall:**

- Work with the county to develop procedures by which the special assessment and tax lien will be attached to approved commercial buildings as security for the private financing provided by lenders and investors;
- Draft a report detailing procedures by which the special assessment and tax lien will be attached to approved buildings;
- Submit to the LGCPM documents necessary to create the tax lien; and
- Draft a summary report on created tax liens, which lists the address of each project funded via PACE.

##### **Deliverables:**

- Report detailing procedures by which the special assessment and tax lien will be attached to approved buildings
- Documents necessary to create the tax lien
- Summary report on created tax liens

#### **l. Pilot Program Replication**

The goal of this activity is to use program resources and lessons learned through the establishment of the Program to expand the Program model to other regions in California. This will be accomplished by developing a guidance package, including example program marketing/outreach materials, contracts, applications, RFQ/Ps, resolution language, and documentation of best practices and lessons learned, conducting outreach to local governments around the state to encourage replication of the pilot program's owner-arranged PACE financing of retro-commissioning and capital improvements, and providing technical support to local governments in replicating the pilot program.

The Contractor, Sustento Group and CCI will work with Placer County and San Francisco as the first local governments to model its commercial PACE program after the pilot.

##### **The Contractor shall:**

- Hold regular meetings/calls/webinar with appropriate contacts for Placer County's commercial PACE program;
- Coordinate with CCI to advise Placer County on the mechanics of establishing a commercial PACE program;
- Hold regular meetings/calls/webinar with appropriate contacts for San Francisco's commercial PACE program;
- Coordinate with CCI to advise San Francisco on the mechanics of establishing a commercial PACE program;
- Make publicly available a guidance package of all program documents including:

- Program marketing/outreach materials,
- Application criteria, forms and materials
- RFQ/Ps
- Contracts
- Resolution language
- Case studies, Best Practices, and Lessons Learned
- LAPM will conduct outreach to local governments around the state to encourage replication of the pilot program for nine months following expiration of the grant term, through December 31, 2012; and
- LAPM will provide technical support for local governments replicating the pilot program.

**Deliverables:**

- Meeting summaries prepared by Placer County, San Francisco and any other local governments with whom CCI works
- Case studies, including Best Practices and Lessons Learned, prepared by LAPM and CCI in collaboration with the subject local government replicating this commercial PACE pilot and their Program Administrator
- Program guidance documents, including program marketing/outreach materials, contracts, applications, RFQ/Ps, and resolution language

**m. Expenditure Contingency Planning**

Contractor shares the CEC's policy objective to test potential credit enhancement options to make PACE financing more attractive to program participants. It is the Los Angeles team's belief, based on extensive research and conversations the team has had with multiple stakeholders – including DOE TA Providers LBNL, EEFC, financial institutions, attorneys, property owners, and others – that a DSRF structure will be the most conducive form of credit enhancement to increase market uptake of PACE financing.

While there is significant interest from capital providers in funding energy and water efficiency upgrades, property owners typically do not use outside capital to fund such upgrades. For this reason, it is unclear whether financing on its own can achieve the shared overarching objective of accelerating the energy efficiency marketplace. Because energy and water are relatively small line items in a company's operating budget, and because energy and water efficiency projects are perceived as being complex to design, evaluate, and implement, Contractor believes it is necessary to fund energy audits in order to help property owners understand the business case for making investments to save energy and water.

There currently exists an information gap in the market, caused by the fact that there is no clear standard for performance of energy audits or presentation of recommendations and supporting analyses. Too often, property owners are left with a sense that energy audits are not valid or compelling, which has led to the poor conversion rate of audits to projects in other "free audit" programs. To address this issue, Contractor is working

with Sustento Group and the Clinton Climate Initiative to develop a standardized energy audit Scope of Work and audit report template that can help to start closing the information gap between engineer and investor, and thus enable capital to flow more readily to energy and water upgrades.

**The Contractor Shall:**

In order to: 1) ensure maximum flexibility and effectiveness throughout the remaining grant funding term; 2) ensure that SEP funds are protected and ultimately utilized, the Los Angeles team proposes the following:

1. If Audit funds are not being expended in line with expenditure goals, Contractor may propose to shift funds from Audits to DSRF. The Contractor will submit a written request to the CCM including amount of fund shift requested and providing sufficient documentation that Contractor has taken reasonable action to commit funds. Funds may be shifted to DSRF upon written approval of the CCM.
2. If DSRF funds are not being expended or committed in line with expenditure goals, Contractor may propose to shift funds from DSRF to Audits. The Contractor will submit a written request to the CCM including amount of fund shift requested and providing sufficient documentation that Contractor has taken reasonable action to commit funds in the DSRF model. Funds may be shifted to audits upon written approval of the CCM.

**Task 2.6 Statewide Clearinghouse**

This task has been deleted. Funds shown in the budget are expended funds.

## **EXHIBIT D**

### **Special Terms and Conditions**

#### **1. CONTRACT MANAGEMENT**

- A. The Contractor's Project Manager is responsible for the day-to-day project status, decisions, and communications with the Energy Commission's Contract Manager. The Contractor may change its Project Manager by giving written notice to the Energy Commission, but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change its Contract Manager at any time by giving written notice to the Contractor. The Energy Commission's Contract Officer will sign the written notice.
- C. Energy Commission staff may work side by side with the Contractor's staff, to the extent and under conditions that may be directed by the Energy Commission's Contract Manager. In this connection, the Energy Commission staff will be given access to all data, working papers, etc., that the Contractor may seek to utilize.
- D. The Contractor will not be permitted to utilize Energy Commission personnel for the performance of services that are the Contractor's responsibility, unless the Energy Commission's Contract Manager agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to the Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.

#### **2. STANDARD OF PERFORMANCE**

The Contractor shall be responsible in the performance of it and its subawardee and vendor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by the Contract Manager or its designee, shall be borne in total by the Contractor/subawardee/vendor and not the Energy Commission. In the event the Contractor/subawardee/vendor fails to perform in accordance with the above standard, the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies that the Energy Commission may have under law.

- A. The Contractor/subawardee/vendor will reperform, at its own expense, any task that was not performed to the reasonable satisfaction of the Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. The Contractor/subawardee/vendor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.



- B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Energy Commission directs the Contractor not to reperform a task, the Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

### 3. **PROCUREMENT**

When procuring property and services with funds awarded under this Agreement, the Contractor and subawardees shall follow the following procurement policies and procedures of 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations (<http://ecfr.gpoaccess.gov>), which are incorporated by reference in Exhibit E:

- A. State governments shall follow the same policies and procedures they use for procurements from their non-Federal funds.
- B. Local governments shall follow 10 CFR Section 600.236(b) through (i).
- C. Institutions of higher education, hospitals, and other nonprofit organizations shall follow 10 CFR Sections 600.140 through 600.149.
- D. For-profit organizations shall follow 10 CFR Section 600.331.

### 4. **SUBAWARDS**

The Contractor shall enter into agreements with the following firms and/or individuals, and shall manage their performance.

Renewable Funding, Ecology Action, MIG Corporation, County of Sonoma, Community Redevelopment Agency of Los Angeles, and California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA).

**AND**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the Energy Commission and any subawardees or vendors, and no subaward shall relieve the Contractor of its responsibilities and obligations under this Agreement. The Contractor agrees to be as fully responsible to the Energy Commission for the acts and omissions of its subawardees or vendors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subawardees or vendors is an independent

obligation from the Energy Commission's obligation to make payments to the Contractor. As a result, the Energy Commission shall have no obligation to pay or to enforce the payment of any monies to any subawardee or vendor.

- B. The Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subawardees or vendors for work performed in accordance with the terms of this Agreement. The Contractor shall be responsible for: (1) scheduling and assigning subawardees or vendors to specific tasks in the manner described in this Agreement; (2) coordinating subawardee or vendor accessibility to Energy Commission staff; and (3) submitting completed products to the Contract Manager.

C. Required Subaward Provisions

All subawards shall contain the following:

- 1) The provisions of Exhibit E. Vendor subawards shall only contain the provisions in Attachment 7 of Exhibit E (Exhibit E Vendor Flow-Down Provisions).
- 2) The provisions required by 10 CFR Section 600.236(i).
- 3) The "Recordkeeping and Inspection of Records" paragraph of this Exhibit (Exhibit D).
- 4) A provision that further assignments shall not be made to any third or subsequent tier subawardee without additional written consent of the Contract Manager.
- 5) The confidentiality provisions in the "Reports" paragraph of this Exhibit (Exhibit D).
- 6) The audit rights, indemnification, and non-discrimination provisions stated in the General Terms and Conditions (Exhibit C);
- 7) Provisions recognizing the applicability of the funding limitations of 10 CFR Section 420.18, as modified by Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.
- 8) A provision that directs subawardees to submit copies of executed subawards and applicable prevailing wage determinations to the Contract Manager, pursuant to the "Subaward Documentation" paragraph of this Exhibit (Exhibit D).

- 9) A provision that the Energy Commission must approve of executed subawards and prevailing wage determinations prior to the commencement of any work under a subaward, pursuant to the "Subaward Documentation" paragraph of this Exhibit (Exhibit D).

#### D. Prevailing Wages

- 1) The Contractor must ensure that any subawardees or vendors under this Agreement are paid in compliance with federal prevailing wage law as provided in Paragraph 2.M of Exhibit E ("Davis-Bacon Act and Contract Work Hours and Safety Standards Act"), and with state prevailing wage law as provided below. When advertising for a public contract opportunity, the Contractor and its subwardees or vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.
- 2) The Contractor agrees to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the Agreement subject to the requirements of California Labor Code Section 1770 et seq. The Contractor is responsible for ascertaining and complying with all current general prevailing wage requirements and rates for crafts and any rate changes that occur during the life of the Agreement. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. The Contractor is further responsible to keep accurate payroll records and comply with all other administrative requirements provided in the California Labor Code.

#### E. Subaward Documentation

- 1) Subawards and Prevailing Wage Determinations
  - (a) The Contractor must submit the following to the Contract Manager within thirty (30) days or less of execution of any subaward under this Agreement:
    - (1) The complete, executed subaward; and
    - (2) The applicable wage determinations for all labor and mechanic work to be performed under the subaward.

The Energy Commission must approve the executed subaward and applicable wage determinations prior to the commencement of any work under the subaward. Execution of this Agreement does not constitute the Energy Commission's approval of prevailing wage rates identified by the Contractor prior to execution of the Agreement. The Energy Commission will review executed subawards and prevailing wage determinations after this Agreement has been approved and

executed. Installation costs incurred by the Contractor prior to the Energy Commission's approval of the subaward and wage determinations are not reimbursable under this Agreement.

- (b) The Contractor must include provisions in all subawards that:
  - (1) Direct its subawardees to submit copies of executed subawards and applicable wage determinations to the Contract Manager; and
  - (2) State that the Energy Commission must approve the executed subawards and applicable wage determinations prior to the commencement of any work under the subaward.
- (c) The requirements specified in (a) and (b) above apply to subawards funded in whole or in part with cost share funds, where the purpose of such subawards is to carry out or support any portion of this Agreement.

## 2) Certified Payrolls

The Contractor must submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared in accordance with 29 CFR Section 5.5 (a)(3)(ii) for all subawardees that are subject to the Davis-Bacon Act. See Paragraph 2.M of Exhibit E, "Davis-Bacon Act and Contract Work Hours and Safety Standards Act."

## 3) Solicitations and Proposals/Bids

The Contractor shall maintain the following subaward documentation and provide it to the Contract Manager or Contract Officer, upon request:

- (a) All solicitations for services or products required to carry out the terms of this Agreement.
- (b) Copies of solicitation proposals or bids received.
- (c) *If the Contractor is a local government that has issued a noncompetitive proposal*, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR Section 600.236(d)(4) specifying why competitive procurement was infeasible and which of the following circumstances applies:
  - (1) The item is available only from a single source;
  - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (3) The U.S. Department of Energy authorizes noncompetitive proposals; or

- (4) After solicitation of a number of sources, competition is determined inadequate.

F. Assignment of Subawards

The Contractor shall not allow any subawardees or vendors to assign any portion of a subaward related to this Agreement to a third party or subsequent tier subawardees or vendors without first obtaining the written consent of the Contract Manager and following the procedures below in the "Process for Additions, Removal or Substitutions of Subawardees or Vendors" paragraph of this Exhibit.

G. Bureau of State Audits

All subawards entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

H. Notification of Subaward Termination

Upon the termination of any subaward, the Contractor shall notify the Contract Manager and Contract Officer immediately in writing.

I. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement

If the Energy Commission or Contractor requires the replacement or substitution of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the Contractor shall:

- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of the Contractor or a subawardee or vendor).
- 2) If there is no available person listed in this Agreement who can perform the work, then the Contractor shall provide documentation from all the persons who were offered and declined the work to the Contract Manager. Then, the Contractor may request to add a new person to the Agreement. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- 3) If the person added is an employee of the Contractor or an existing subawardee or vendor, the Contractor shall provide the added employee's pay rate, classification and resume to the Contract Manager, and the Contract Manager may approve the new person and rate. The Contract Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in

the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.

- 4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the "Disabled Veteran Business Enterprise (DVBE) Requirements" paragraph below for changes to DVBEs.
- 5) If the person added is a new subawardee or vendor, the Contractor shall use the process outlined below.

J. Process for Additions, Removal or Substitutions of Subawardees or Vendors

The Energy Commission reserves the right to replace a subawardee or vendor, request additional subawardees or vendors, and approve additional subawardees or vendors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Contractor requires the replacement, substitution or addition of a subawardee or vendor, the subawardee or vendor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three (3) or more bids and advertising the work to a suitable pool of subawardees or vendors including without limitation: California Contracts Register; the Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subawardee or vendor.
- 2) The Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subawardees or vendors.
- 3) When a subawardee or vendor is proposed to be added, under either a competitive or non-competitive process, the Contract Manager shall complete and submit to the Contracts Officer a "Subawardee or Vendor Add" form. This form identifies the new subawardee or vendor, resumes, what bidding method was used to obtain the subawardee or vendor (competitive or non-competitive), and rates. The proposed subaward can be executed only after the Contract Officer approves the "Subawardee or Vendor Add" form.

K. Separation of Duties from Monitoring, Verification, and Evaluation Contractor

The Energy Commission has retained KEMA Inc. to serve as the monitoring, verification, and evaluation (MV&E) contractor for all of the Energy Commission's ARRA-funded projects, including projects funded through contracts, grants, or loans under the State Energy Program, the Energy Efficiency and Conservation Block Grant Program, the State Energy Efficient Appliance Rebate Program, and

the Energy Assurance Planning Program. In order to achieve the Energy Commission's policy requiring separation of duties between the MV&E contractor and any projects that it evaluates, the Contractor is prohibited from including KEMA Inc. or its subsidiary known as KEMA Services Inc. as a participant in this project, where KEMA Inc. or KEMA Services Inc. are paid either from funds of this Agreement as a subawardee or from other funds the Contractor has included as cost share to achieve the objectives of this Agreement.

5. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS**

A. Reporting

If the Contractor made a commitment to achieve DVBE participation for this Agreement, the Contractor must within sixty (60) days of receiving final payment under this Agreement, certify in a report to the Contract Officer: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Pursuant to California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

B. Substitution of DVBE

The Contractor shall use each DVBE identified in its proposal or listed in this Agreement. The Contractor understands and agrees that if DVBEs were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If the Contractor believes an identified DVBE must be replaced or substituted, the Contractor shall inform the Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. Pursuant to California Military and Veterans Code Section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services. The Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE.

C. Amendment

This Agreement shall be amended if: a DVBE must be substituted and DGS has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.

D. Grounds for Termination; Damages; Penalties

Failure of the Contractor to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for: (1) termination of this Agreement; (2) recovery of damages under rights and remedies due to the State; and (3) penalties as outlined in California Military and Veterans Code Section 999.9 and California Public Contract Code Section 10115.10.

6. **RECORDKEEPING AND INSPECTION OF RECORDS**

The Contractor shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission and the Federal government upon request. In accordance with 10 CFR Part 600, the Contractor's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. Pursuant to 10 CFR Section 600.242, the Contractor agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor shall include appropriate provisions in each of its subawards to secure adequate backup documentation to verify all subawardee and vendor services and expenses invoiced for payment under this Agreement.

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Contractor or any of its subawardees or vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Contractor shall include this provision in all of its agreements with its subawardees, and vendors from whom it acquires goods or services in its execution of ARRA-funded work.

7. **DISCRIMINATION AND HARASSMENT TRAINING**

All employees of the Contractor, subawardees, and vendors who provide services under this Agreement and maintain work space at the Energy Commission shall take annual training on the prevention of discrimination and harassment. The Energy Commission shall provide the online training course at no charge to the Contractor, subawardees, and vendors. However, the Contractor, subawardees, and vendors shall not invoice for the time spent taking the course. The Contractor shall ensure that all employees of the Contractor and any subawardee or vendor who provide service under this Agreement and represent the Energy Commission in public hearings and workshops, but do not maintain office space at the Energy Commission, receive training on the prevention of discrimination and harassment.



## 8. **PERFORMANCE EVALUATION**

Consistent with California Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statements to the Energy Commission and DGS defending its performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of thirty-six (36) months and shall not be a public record.

## 9. **REPORTS**

A. **Federal Reporting Requirements:** The Contractor shall submit progress reports to the Energy Commission in accordance with Exhibits A and E.

B. **Additional Reporting Requirements:**

- 1) **Progress and Final Reports:** The Contractor shall prepare progress reports summarizing all activities conducted by the Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, the Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
- 2) **Title:** The Contractor's name shall only appear on the cover and title page of reports as follows:  
  
California Energy Commission  
Project Title  
Contractor Number  
By (Contractor)
- 3) **Ownership:** Each report shall become the property of the Energy Commission.
- 4) **Non-disclosure:** The Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Contract Manager, except as provided in 6, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize the Contractor to further disclose and disseminate the information on any other occasion. The Contractor will not comment publicly to the press or any other media regarding its report, or the Commission's actions on the same, except to Commission staff, the Contractor's own personnel

involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of the Contractor or the content of any preliminary or final report, the Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

- 5) **Confidentiality:** Neither the Contractor, its employees, or any tier of subawardees may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR Sections 2501, et seq.). At the election of the Contract Manager, the Contractor, the Contractor's employees, and any subawardee shall execute a "Confidentiality Agreement," supplied by the Contract Manager or Contract Officer. Each subaward shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.
- 6) **Disclosure:** Ninety (90) days after any document submitted by the Contractor is deemed by the Contract Manager to be a part of the public records of the State, the Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following acknowledgement and disclaimer:

"This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-0000221."

*Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof."

10. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager.
- C. All equipment purchased with Federal funds shall be subject to the provisions of Title 10 CFR Part 600.
- D. All equipment purchased with Energy Commission funds shall be subject to the following terms and conditions:
  - 1) Title to all non-expendable equipment purchased in whole or in part with Energy Commission funds shall remain with the Commission. Non-expendable equipment is defined in accordance with Section 7.29 of the State Contract Manual as items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more.
  - 2) The Contractor shall maintain an inventory record of each piece of non-expendable equipment purchased or built with Energy Commission funds. The inventory record shall include the date the equipment was acquired, total cost, serial number, model identification, and any other information or description necessary to identify the equipment.
  - 3) The Contractor shall assume all risk for maintenance, repair, destruction, and damage to the equipment while it is in the Contractor's possession or subject to its control. The Contractor is not expected to repair or replace equipment intended to undergo significant modification or testing to the point of damage or destruction as part of the work described in Exhibit A, Scope of Work.
- E. Upon termination or completion of this Agreement, the Energy Commission's Executive Director may:
  - 1) Authorize the continued use of such equipment.
  - 2) By mutual agreement with the Contractor, allow the Contractor to purchase equipment for an amount not to exceed the residual value of the equipment as of the date of termination or completion of this Agreement.
  - 3) Request delivery of the equipment to the Energy Commission, with any costs incurred for such return to be borne by the Energy Commission.

## 11. **INTELLECTUAL PROPERTY RIGHTS OF PARTIES**

If intellectual property will be used or developed under this Agreement, the following provisions apply.

- A. Exhibit E, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement. This Section 11 provides additional description of the parties' intellectual property rights as follows:
- B. The activities performed by Contractor under this Agreement will include, without limitation, the design, development and implementation of the Upgrade Energy California web portal ("Portal") and, specifically development of the deliverable described in Exhibit A ("Deliverables"). The Deliverables will include and incorporate local jurisdictions' and Energy Commission's data, logos, trademarks and other content ("Content"). The activities to be performed by Contractor also will include modification and customization of Contractor's existing website platform and technology, data, information, techniques, methodologies and materials as specifically described in subsection G below and in Exhibit D Attachment 1 as "Pre-Existing Technology".
- C. Accordingly, as between Contractor and the Energy Commission or the DOE, the Contractor shall retain all rights, including intellectual property rights, in all Pre-Existing Technology. The Energy Commission shall retain all rights, including intellectual property rights, in the Content.
- D. Contractor shall further retain all right, title and interest, including intellectual property rights, in and to the Deliverables that are comprised of modifications and/or customizations of the Pre-Existing Technology, including without limitation, the platform and related functionality for data gathering, integration, transmission or otherwise underlying the Portal ("Contractor-Owned Deliverables"), subject to Energy Commission's and DOE's rights in the Deliverables and Content, and further subject to the Energy Commission's rights to the Deliverable Data, both as described herein.
- E. The Energy Commission shall retain all rights, including the intellectual property rights, in and to the Content provided by the Energy Commission or local jurisdictions to Contractor in connection with the website and other activities under this Agreement.
- F. The Energy Commission acknowledges that Contractor will be using the Pre-

Existing Technology and Deliverables to deliver Services to the Energy Commission on a software-as-a-service model and that, as such, except as expressly provided under Section H below, Contractor has no obligation to deliver and will not be delivering any software to the Energy Commission or any other third party.

- G. The Energy Commission shall own all customer ~~d~~Data obtained through the website and shall and hereby grants the Contractor a non-exclusive, ~~worldwide, royalty-free license~~ license and right to copy, use, modify, distribute and otherwise utilize such customer Data during the term of this Agreement solely in order to carry out the activities for the Energy Commission under this Agreement, subject to all applicable laws restricting such copying, use, modification, distribution or utilization by the Information Practices Act at Government Code sections 1798 et seq., the Financial Information Privacy Act at Finance Code sections 4050 et seq., and other applicable federal and state privacy laws.

H. Source Code.

(1) Within forty-five (45) days of the Effective Date of ~~this the~~ the Amendment to this Agreement that adds subpart H (6) below, Contractor shall enter into a source code escrow agreement with an escrow agent mutually agreed to by both parties, at Contractor's sole cost and expense ("Escrow Agreement") establishing a source code escrow account ("Escrow Account"). Promptly after execution Contractor shall deposit a copy of the source code and documentation for the Pre-Existing Technology into the Escrow Account. Within forty-five (45) days after the public launch of the web portal, Contractor shall deposit into the Escrow Account a copy of the source code and documentation for the Contractor-Owned Deliverables. Once every calendar quarter during the term of this Agreement Contractor shall deposit into the Escrow Account a copy of all upgrades, fixes, corrections and/or enhancements to the source code and/or documentation for the Pre-Existing Technology and Contractor-Owned Deliverables ("Updates"). The source code and documentation for the Pre-Existing Technology, Contractor-Owned Deliverables and Updates shall be referred to collectively herein as the "Source Code Materials".

(2) Notwithstanding subsection (H)(1) above, and provided that the Energy Commission is current in payment of undisputed invoices hereunder, the Energy Commission will be entitled to delivery of current Source Code Materials and the other remedies specified in this subsection (2) upon the occurrence of any of the following (each a "Release Event"): (a) Contractor ceases operations; or (b) Contractor becomes insolvent or commits any affirmative act of insolvency, or generally fails to pay, or admits in writing its inability to pay, debts as they become due; or (c) any of the following is not dismissed and continue in existence or remain uncorrected for a period of more than ninety (90) days of

their filing: (i) an order for relief under Title 11 of the United States Code is entered naming Contractor as debtor; or (ii) a general receiver or trustee in bankruptcy assumes Contractor's business or property; or (iii) an action by Contractor under any state insolvency or similar law for liquidation; provided that none of the aforementioned will constitute a condition of source code release if, within the specified ninety (90) day period, Contractor (or Contractor's receiver or trustee in bankruptcy) provides to Energy Commission adequate assurances, reasonably acceptable to Energy Commission, of Contractor's continuing ability and willingness to fulfill all of Contractor's obligations under the Agreement; or (d) Contractor is either unwilling or unable to provide support and maintenance in accordance with the Agreement; or (e) at the end of the term of the Agreement; or (f) at the end of the Agreement, if the Agreement is terminated before the end of the term of, provided that; the termination occurs after the Contractor-Owned Deliverables have been completed.

(3) The Energy Commission will have no right to exercise the license granted in this Section H (3) until the occurrence of a Release Event. Upon transfer of the Source Code Materials to the Energy Commission, Contractor hereby grants to the Energy Commission, at no additional charge, a perpetual, non-exclusive, irrevocable license to use, modify, display, copy, enhance and create derivative works of the Source Code Materials for the sole purpose of operating, supporting and maintaining the Portal, in order to carry out the purposes of the Agreement and the Energy Upgrade California Program. The Energy Commission shall have the right to sublicense its rights under the license in this Section (3) to a third party for the sole purpose of such third parties operating, supporting and maintaining the Portal ("Third Party Subcontractor"). Contractor will provide transition technical support and services mutually agreed to by the parties at Contractor's then-standard hourly rate to enable the Energy Commission to become familiar with the Source Code Materials.

(4) With respect to the Source Code Materials that are released to Energy Commission: (a) Energy Commission may make only a reasonable number of copies of such Source Code Materials as necessary for use as set forth in Section H(3) and only for use by Energy Commission employees or Third Party Subcontractors who must have access thereto for such purposes, and, all such copies shall reproduce all Contractor copyright and other proprietary notices thereon; (b) use of such Source Code Materials shall be monitored and distribution thereof tracked by the Energy Commission; (c) under no circumstances shall Energy Commission distribute or disclose to any third party other than a Energy Commission Third Party Subcontractors any portion of the Source Code Materials; and (d) without limiting the foregoing, Energy Commission shall treat the Source Code Materials with at least the same degree of care as Energy Commission uses for its own confidential information (e.g., where information is identified as "Energy Commission Confidential"), but in no case less than reasonable care. Contractor shall at all times retain all right, title and interest in and to the Source Code Materials, including the media on which

they are encoded.

(5) If Contractor disputes a demand from Energy Commission for release of Source Code Materials, the parties shall, follow the dispute process set forth in Exhibit D Section 13.

(6) As of the Effective Date of the Amendment to this Agreement that adds this subpart H(6), Contractor assigns all of its rights, but not its costs or liabilities, under this Section 11.H and all of its rights, but not its costs or liabilities, under the Escrow Agreement to the Energy Commission. As such, Contractor acknowledges that it no longer has any rights to the Source Code Materials under the Agreement. The intent of the parties in enacting this subpart is to transfer the Source Code directly from subcontractor Renewable Funding to the Energy Commission and not via the Contractor.

- I. Exhibit E, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement.  
The Contractor shall obtain the same rights for the Energy Commission and DOE from all subawardees, vendors, and others who produce copyrightable material, data, works of art, works of fine art or subject inventions under this Agreement. The Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subawardees and vendors. No subaward shall be entered into without these rights being assured to the Energy Commission and DOE from the subawardee or vendor.  
In accordance with 48 CFR section 12.212, DOE does not reserve any rights in the Contractor's Pre-existing Technology or in the modifications and/or customizations of such Pre-existing Technology (Contractor-Owned Deliverables) under this Agreement.
- J. Rights to DOE. The Energy Commission and Contractor acknowledge that they are still in the process of discussing the provisions of this Section and the rights of the DOE under this Agreement. The Energy Commission has referred to the DOE certain questions regarding these matters and, to date, has not received a complete response back from the DOE. Because the parties are pressed to sign this Agreement quickly, Contractor has agreed to execute the Agreement with this Section J (regarding DOE rights) unchanged. The parties agree that, after the DOE responds to the Energy Commission they will promptly meet and negotiate in good faith amendments that address Contractor's concerns regarding the DOE's response and this Section J.
- 1) Except as provided in paragraph 3 of Section I above, the Contractor grants to DOE for all copyrightable work a royalty-free, nonexclusive and

irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

- 2) The Contractor acknowledges and agrees that DOE has the right to:
  - (a) Obtain, reproduce, publish or otherwise use the data first produced under the Agreement; and
  - (b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

K. Rights to Energy Commission.

- 1) The Contractor grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement other than Pre-Existing Materials or Contractor-Owned Deliverables (which are licensed only in connection of a release of Source Materials under Section 11(H)), a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art only for State of California governmental purposes.
- 2) The Contractor grants to the Energy Commission a no-cost, nonexclusive, nontransferable, irrevocable license to use or have practiced for or on behalf of the State of California any subject invention(s) first produced in the performance of this Agreement only for State of California governmental purposes.
- 3) The Contractor grants to the Energy Commission the no-cost use of any technical data first produced or specifically used in the performance of this Agreement only for State of California governmental purposes.
- 4) The Contractor grants to the Energy Commission, for all marks developed and first used under this Agreement, a no-cost, irrevocable license to use the marks for purposes of furthering programs funded under this Agreement or other related or successor programs implemented by the Energy Commission. For purposes of this paragraph, "marks" include logos, symbols, service marks, trademarks, registered marks, or other indicia of origin, whether or not registered.

- L. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion



asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.

- M. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- N. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under the Contractor's control prior to commencement of performance of this Agreement, and which the Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. Proprietary data shall be deemed Pre-Existing Technology and, as such, title to "proprietary data" and all intellectual property rights therein shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- O. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system solely developed in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, subject to Contractor's right and license set forth below, shall be deemed "generated data." Subject to Contractor's right and license set forth below, "generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- P. As to "generated data" which is reserved to the Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at the Contractor's own expense for a period of not less than three (3) years after receipt by the Energy Commission of the Final Report herein.
- Q. Before the expiration of the three (3) years, and before changing the form of or destroying any data, the Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. The Contractor agrees that the Energy

Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. The Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

- R. Except as expressly permitted in Section G and T herein ~~or otherwise permitted in Exhibit D of this Agreement~~, the Contractor agrees that it shall not use or allow subcontractors or other third parties to use any deliverable or generated data owned by the Energy Commission and in the possession or control of the Contractor, subcontractor, or third party during or after termination of this Agreement. Except as expressly permitted in Sections U-G and T herein ~~or otherwise permitted in Exhibit D of this Agreement~~, ~~neither~~ the Contractor, subcontractors, ~~nor and~~ other third parties do not have a license to use the deliverable or generated data during or after termination of this Agreement. Except as expressly permitted in Section T herein or otherwise permitted in Exhibit D of this Agreement, the Contractor, subcontractor, and other third parties may use the deliverable data or generated data to the same extent as other members of the public if the Energy Commission makes the such data publicly available during or after termination of this Agreement.
- S. Contractors represents and warrants that it owns or has the rights to use the Pre-Existing Technology for the purposes of this Agreement, including the rights to modify or customize the Pre-Existing Technology, and that its use of the Pre-Existing Technology for these purposes will not infringe upon the rights any third party.
- T. ~~Notwithstanding anything to the contrary herein, the Energy Commission hereby grants Contractor, under all of its intellectual property rights in and to the Generated data, Deliverable data and Data ("Licensed Data"), a non-exclusive, perpetual, irrevocable, fully paid up, royalty free, worldwide, transferable, sublicensable right and license to use, perform, display, reproduce, and create derivative works of the Licensed Data:~~

- ~~(i) —for the purposes of researching and analyzing such data and the for use of the Portal and the offerings thereon; and~~
- ~~(ii) to create, publish and distribute in aggregate (not personally identifiable) form the findings of the research and analysis done pursuant to subsection (i): (a) for the purpose of improving and promoting the Portal, and (b) to advance the goals of Contractor's business including, without limitation, offering innovative financing tools for renewable energy and energy efficiency installations to residential and commercial property owners.~~

Notwithstanding anything to the contrary herein, the Energy Commission hereby grants Contractor, under all of its intellectual property rights in and to the Generated data, Deliverable data and Data ("Licensed Data"), a non-exclusive

right and license to copy, use, modify, distribute and otherwise utilize the Licensed Data for only the purposes of performing its obligations under this Agreement, providing it to the EUC participating partners to facilitate the participants' energy upgrade projects under the EUC, and providing it to participating local governments for the purpose of furthering the EUC. EUC participating partners and participating local governments must sign a non-disclosure agreement with the Energy Commission before Contractor can release the data to them.

All Contractor's use of the Licensed Data shall be subject to and in compliance with applicable federal and state laws, including without limitation, privacy laws.

## 12. **PUBLIC HEARINGS**

If public hearings on the scope of work are held during the period of this Agreement, the Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse the Contractor for compensation and travel of the personnel at the Agreement rates for the testimony that the Energy Commission requests.

## 13. **DISPUTES**

In the event of a Contract dispute or grievance between the Contractor and the Energy Commission, both parties shall follow the following procedure. The Contractor shall continue with the responsibilities under this Agreement during any dispute.

### A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position, and the remedy sought. The Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer's decision, the Contractor may appeal to the Executive Director.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's

decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. The Contractor will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

B. Binding Arbitration by Mutual Agreement

Should the Energy Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Energy Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration.

The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules.

If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;

- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of funds from this Agreement. Both parties must agree, in writing, to utilize funds from this Agreement to pay for arbitration costs.

#### 14. **TERMINATION**

The parties agree that because the Energy Commission is a state entity, it must be able to immediately terminate the Agreement upon the default of Contractors, and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. The Contractor specifically acknowledges that the Energy Commission's unilateral termination of the Agreement under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. The Contractor further agrees that upon any of the events triggering the unilateral termination of the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

This Agreement may be terminated for any reason set forth below.

##### A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay the Contractor only the reasonable value of the services rendered by the Contractor prior to termination, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement;
- 2) Inability of the Contractor to pay its debts as they become due and/or the Contractor's default of an obligation that impacts its ability to perform under this Agreement;
- 3) Determination by the Energy Commission or the Executive Director after notice and hearing that the Contractor or any agent or representative of

the Contractor offered or gave gratuities to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding, amending or making a determination with respect to performance of the Agreement;

- 4) Significant change in Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission;
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; and
- 6) The retention or hiring of subawardees/vendors, or the replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within thirty (30) days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

15. **ENFORCEABILITY**

The Contractor agrees that if it or one of its subawardees or vendors fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable Federal and State laws.

16. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, meaning in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

17. **CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

18. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

19. **NOTICE**

This paragraph applies to situations where notice is required to be given by this Agreement, or the parties are asserting their legal rights and remedies. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work.

The parties to the Agreement must give legal notice using U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this paragraph.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In this event, the effective date shall be postponed until the next business day.

20. **STOP WORK**

The Contract Officer may, at any time, by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, work that falls below the applicable standard of performance, out of scope work, delay in project schedule, and misrepresentations.

- A. Compliance. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. The Commission shall make an equitable adjustment based upon the Contractor's written request. The Contractor must make such adjustment request within thirty (30) days from the date of receipt of the stop work notice.

- C. Revoking a Stop Work Order. The Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission's Contract Officer canceling the stop work order.

## 21. **INTERPRETATION OF TERMS**

This Agreement shall be conducted in accordance with these terms and conditions. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

## 22. **AMENDMENTS**

- A. This Agreement may be amended pursuant to the terms of this Section 22 to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to California Public Contract Code Section 10335, California Government Code Section 11010.5, and the State Contract Manual. Amendments may require prior written approval from DOE.

- B. The Contractor acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Contractor agrees to comply with any amendments that the Energy Commission makes to this Agreement to comply with Federal or State law, regulation, or policy.

- C. Formal Amendments

Significant changes to this Agreement must be approved at an Energy Commission business meeting through a formal amendment, and must be approved in writing by Contractor. Significant changes include, but are not limited to:

- 1) Change of the Contractor;
- 2) Changes to Exhibit A that significantly modify the Agreement's purpose;
- 3) Changes to Exhibit A that extend the due dates beyond the term of the Agreement;
- 4) Changes to Exhibit B that increase the amount of the Agreement; and
- 5) Changes to Exhibit B that increase rates or fees.

- D. Informal Amendments



The Energy Commission's Contract Manager may approve changes to this Agreement that are not significant, including changes required to comply with Federal or State law, regulation, or policy. These changes shall be documented in a letter of agreement between the Energy Commission's Contracts Officer and the Contractor.

23. **BONDING AND INSURANCE REQUIREMENTS**

- A. The Contractor shall follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the federal provisions incorporated by reference in Exhibit E, including OMB Circulars.
- B. The Contractor hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Contract Manager satisfactory evidence of this insurance at any time the Contract Manager may request.
- C. If the Contractor is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Contract Manager satisfactory evidence of this insurance at any time the Contract Manager may request.

24. **CONFIDENTIALITY**

- A. Information Considered Confidential

If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

- B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission's Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

- C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, the Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 California Code of Regulations (CCR) Section 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR Sections 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

25. **CONFLICT OF INTEREST**

- A. The Contractor agrees to continuously review new and upcoming projects in which members of the Contractor's team may be involved for potential conflicts of interest. The Contractor shall inform the Contract Manager as soon as a question arises about whether a potential conflict may exist. The Contract Manager and Energy Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.
- B. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the Contract Manager, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the Contract Manager before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Commission staff who perform the same nature and scope of work as the consultant.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid to the Energy Commission for, nor be awarded a contract with the Energy Commission for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services

contract. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than ten (10) percent of the total monetary value of the consulting services contract.

26. **RECOGNITION OF ARRA FUNDING**

The Contractor shall publicly recognize ARRA as a source of funding for project(s) funded under this Agreement. The Contract Manager shall provide the Contractor with instructions on how to publicly recognize ARRA funding. Such instructions will include any DOE requirements on the proper notice and branding to publicize the use of ARRA funding.

27. **“ENERGY UPGRADE CALIFORNIA” IDENTITY MARK AND LOGO**

It is important for all ARRA-funded programs administered by the Energy Commission to provide consistent and clear messaging and branding for the State of California’s consumers. A single identifying brand lends authority and reliability to the multiple statewide programs offered by various private and public local, regional, and state entities. The Energy Commission is implementing a statewide branding effort called “Energy Upgrade California”. The branding effort will include development of a statewide ARRA Energy Upgrade California Identity Mark and Logo (Identity Mark/Logo) for use in conjunction with marketing, promotional, and educational materials, and development of a central Energy Upgrade California website portal for purposes of disseminating program information and interconnecting program participants. No portion of any website developed by the Contractor under this Agreement shall overlap, contradict, or supplant any portion of the Energy Upgrade California Program website portal. Energy Upgrade California is being developed in conjunction with the statewide branding efforts of the California Public Utilities Commission.

The Contractor shall participate in the Energy Commission’s statewide branding effort as specified in this section.

A. Identity Mark/Logo

The Contractor shall use the Identity Mark/Logo on all marketing, promotional, and informational materials for programs and projects funded through this Agreement, including any printed or electronic collateral, websites, signage, or clothing.

B. Coordinating Use of Identity Mark/Logo

- 1) The Contractor shall coordinate its required use of the Identity Mark/Logo with the Energy Commission before using the Identity Mark/Logo. This coordination may include the Contractor’s submission of its proposed marketing, promotional, and informational materials and websites to the Energy Commission for its review to ensure the Identity Mark/Logo is being used appropriately. If the Energy Commission requires the

Contractor to submit such materials and websites for its review, the Energy Commission will use its best efforts to approve all proposed uses of the Identity Mark/Logo in an expeditious manner. The Energy Commission may prohibit the Contractor from using the Identity Mark/Logo if any of the proposed uses breach the terms of this Agreement.

- 2) Upon reasonable prior written notice, the Contractor shall provide the Energy Commission unrestricted access to its websites, so the Energy Commission may review the Contractor's use of the Identity Mark/Logo.

#### C. Authorized Uses

- 1) The Contractor may use, reproduce, display, and publish the Identity Mark/Logo only for purposes of marketing or promoting the ARRA-funded program or project(s) funded through this Agreement. The Contractor may not use the Identity Mark/Logo for other purposes. The Contractor may not use any other Energy Commission mark or logo obtained from the Energy Commission's website, promotional materials, or any other source.
- 2) The Contractor may use, reproduce, and display the Identity Mark/Logo on its website as a link to the Energy Commission's website. The Contractor may not use the Identity Mark/Logo to link to any other website.

#### D. Unauthorized Uses

- 1) The Contractor may not use the Identity Mark/Logo in a manner that expresses or implies the Energy Commission's endorsement, approval, favoring, or sponsorship of the Contractor or its products, services, or websites. Except to identify itself as a contractor of the Energy Commission, the Contractor may not use the Identity Mark/Logo in a manner that implies the Energy Commission's affiliation with the Contractor or its products, services, or websites.
- 2) The Contractor may not use the Identity Mark/Logo in a manner that suggests the Contractor's products, services, or websites are the Energy Commission's products, services, or websites.
- 3) The Contractor may not use the Identity Mark/Logo in a manner that damages, disparages, or diminishes the Energy Commission or its ARRA-funded programs or projects, including but not limited to uses that could be deemed obscene or that encourage unlawful activities.
- 4) The Contractor may not authorize any other party to use the Identity Mark/Logo.
- 5) The Contractor may not use the Identity Mark/Logo as a feature or design element of any other logo. The Contractor may not use the Identity

Mark/Logo in any trademark, service mark, service name, or other indicia of origin.

- 6) The Contractor may not alter the Identity Mark/Logo in any manner, including proportions, colors, or elements, except as otherwise permitted by the Energy Commission.
- 7) The Contractor may not use the Identity Mark/Logo on any materials in which the Contractor's name, logo, or product name does not also appear.

E. Ownership of Identity Mark/Logo

- 1) As between the Energy Commission and the Contractor, the Energy Commission is the exclusive owner of the Identity Mark/Logo. The Energy Commission retains all rights and title to, and interest in, the Identity Mark/Logo. This Agreement does not transfer to the Contractor the Energy Commission's service marks, copyrights, or other intellectual property interests.
- 2) The Contractor may not register, adopt, or use any corporate name, trade name, trademark, domain name, service mark, certification mark, or other designation that violates the Energy Commission's rights in the Identity Mark/Logo.

28. **SURVIVAL**

Certain Agreement provisions survive the completion or termination of this Agreement for any reason. The provisions include, but are not limited to, the following:

- A. Recordkeeping and Inspection of Records
- B. Purchase of Equipment
- C. Intellectual Property Rights of Parties
- D. Disputes
- E. Confidentiality
- F. Indemnification (applicable only to Contractors other than state agencies; see state provisions incorporated by reference in Exhibit C)